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By and through its undersigned counsel, the GUC Trust Administrator<sup>1</sup> of the Motors Liquidation Company GUC Trust (the “GUC Trust”), as established under the Debtors’ Second Amended Joint Chapter 11 Plan dated as of March 18, 2011 [ECF No. 9836] (as confirmed, the “Plan”) of the above-captioned post-effective date debtors (the “Debtors”), respectfully submits this *Motion to Approve (I) the GUC Trust Administrator’s Actions and (II) the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust Pursuant to Bankruptcy Code Sections 105, 363, and 1142 and Bankruptcy Rules 3002 and 9019 and (III) Authorize the Reallocation of GUC Trust Assets* (the “Motion”), seeking entry of an order (the “Settlement Order”) approving the Settlement Agreement (as defined herein). In support of this Motion, the GUC Trust Administrator respectfully represents as follows:

**RELIEF REQUESTED**

1. By this Motion, the GUC Trust asks this Court to approve the actions the GUC Trust Administrator proposes to undertake pursuant to the terms of the Settlement Agreement, approve the Settlement between and among it and certain Ignition Switch Plaintiffs,<sup>2</sup> certain Non-Ignition Switch Plaintiffs,<sup>3</sup> and certain Pre-Closing Accident Plaintiffs<sup>4</sup> (collectively, the

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Settlement Agreement, the Plan or the GUC Trust Agreement, as applicable. Any description herein of the terms of the Plan or the GUC Trust Agreement is qualified in its entirety by the terms of the Plan or the GUC Trust Agreement, as applicable.

<sup>2</sup> The term “**Ignition Switch Plaintiffs**” shall mean those plaintiffs asserting economic loss claims or persons suffering economic losses who, prior to July 10, 2009, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047 (the “**Ignition Switch Defect**”).

<sup>3</sup> The term “**Non-Ignition Switch Plaintiffs**” shall mean those plaintiffs asserting economic loss claims or persons suffering economic losses who, prior to July 10, 2009, owned or leased a vehicle with defects in ignition switches, side airbags or power steering included in Recall Nos. 14V-355, 14V-394, 14V-400, 14V-118 and 14V-153.

<sup>4</sup> The term “**Pre-Closing Accident Plaintiffs**” shall mean those plaintiffs asserting personal injury or wrongful death claims or persons who suffered a personal injury or wrongful death arising from an accident that occurred prior to the Closing Date involving an Old GM vehicle that was later subject to the Recalls. The Pre-Closing Accident Plaintiffs are comprised of a subset asserting claims or who suffered an injury or death involving an Old GM vehicle with an Ignition Switch Defect (the “**Ignition Switch Pre-Closing Accident Plaintiffs**”), and a subset asserting claims or who suffered an injury or death involving vehicles with other defects (the “**Non-Ignition Switch Pre-Closing Accident Plaintiffs**”).

“**Signatory Plaintiffs**,” and together with the GUC Trust, the “**Parties**”) and authorize the GUC Trust to reallocate \$15 million in GUC Trust Assets. As set forth more fully below, among other things, the Settlement resolves all issues arising from the Late Claims Motions in a global fashion, correcting the historic pattern of piecemeal litigation of Plaintiffs’ claims.

2. On April 21, 2014, New GM filed its first of three motions with this Court seeking a ruling that owners of Old GM vehicles that were the subject of recalls conducted by New GM were barred from asserting claims against New GM.<sup>5</sup> New GM’s request precipitated years of litigation in this Court involving numerous parties and a host of complex issues, including, but not limited to, whether the Signatory Plaintiffs should be granted authority to file late proofs of claim (and whether such authority can be granted solely on due process grounds), whether the Plaintiffs’ asserted claims are equitably moot, whether additional grounds exist to object to the Plaintiffs’ asserted claims, and the amount of said claims in the event that they are allowed.

3. Litigation of these issues has been ongoing for several years, and has consumed significant time, money and resources from the parties and the Bankruptcy Court. Nevertheless, key disputes between the Parties remain unresolved. For example, in the April 2015 Decision, the Bankruptcy Court ruled that Old GM failed to provide Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs with constitutionally proper notice of the Bar Date.<sup>6</sup> While the Bankruptcy Court ruled that assets of the GUC Trust could not be tapped to pay any late claims

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<sup>5</sup> See *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction*, dated April 21, 2014 [ECF No. 12620], *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated Aug. 1, 2014 [ECF No. 12807] and *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated Aug. 1, 2014 [ECF No. 12808].

<sup>6</sup> See *In re Motors Liquidation Co.*, 529 B.R. 510, 573-74, 583 (Bankr. S.D.N.Y. 2015), *aff’d in part, rev’d in part, vacated in part sub nom. Elliott v. General Motors LLC (In re Motors Liquidation Co.)*, 829 F.3d 135 (2d Cir. 2016) (the “**April 2015 Decision**”).

that might be allowed as a result of the doctrine of equitable mootness, the Second Circuit vacated this holding as an advisory opinion—leaving open the question of the applicability of equitable mootness.<sup>7</sup> In addition, there is an on-going dispute as to whether an additional showing under the factors articulated in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380 (1993) is required for Plaintiffs to obtain leave to file late claims. In the event Plaintiffs are granted leave to file late claims, the allowance and amount of such claims would also have to be litigated, a process that could take years.

4. Certain Pre-Closing Accident Plaintiffs injured or killed before July 10, 2009, involving vehicles subject to Recall Nos. 14V-355, 14V-394, 14V-400, or 14V-540 (and who are identified by name and Recall Number in Schedule 1 to the Settlement Agreement) have informed the GUC Trust Administrator that they intend to file a Supplemental Late Claims Motion on or before May 31, 2018, seeking allowance of their late claims based on due process violations relating to the foregoing recalls. As part of the Settlement, the GUC Trust will settle these late claims along with the late claims of the other Signatory Plaintiffs.

5. Continuation of protracted litigation on the foregoing and related issues will deplete remaining GUC Trust Assets, delay any further GUC Trust distributions, and subject the Parties to uncertain results. In an effort to avoid these risks, the GUC Trust, Designated and Lead Counsel for Ignition Switch and certain Non-Ignition Switch Plaintiffs, counsel for certain Pre-Closing Accident Plaintiffs and the Participating Unitholders engaged in good faith, arms'-length negotiations concerning a potential settlement (the "**Initial Settlement**") that would resolve the many disputes surrounding the Signatory Plaintiffs' ability to file late proposed class claims that seek relief for: (i) economic losses related to Old GM's alleged concealment of safety defects in

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<sup>7</sup> See In re Motors Liquidation Co., 529 B.R. at 529; Elliott, 829 F.3d at 168-69.

ignition switches (including the Ignition Switch Defect and similarly defective ignition switches), side airbags, and power steering and (ii) personal injury and wrongful death claims against the GUC Trust related to Old GM vehicles subject to the Recalls.

6. As discussed in the Court's *Memorandum Opinion and Order Regarding Motion to Enforce the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust*, dated Jan.18, 2018 [ECF No. 14212] (the "**Settlement Decision**"), the GUC Trust determined ultimately not to execute the Initial Settlement. Following the Court's issuance of the Settlement Decision, the GUC Trust retained new counsel, and after termination of a forbearance agreement with New GM; the GUC Trust, the Participating Unitholders, the Designated and Lead Counsel for the Ignition Switch and certain Non-Ignition Switch Plaintiffs, and counsel for certain Pre-Closing Accident Plaintiffs resumed their good faith, arms'-length negotiations. These negotiations have culminated in the Parties' agreement to the settlement that is the subject of the Motion (the "**Settlement**," and the agreement documenting it, the "**Settlement Agreement**").

7. The Settlement consists of the following three components, all subject to Bankruptcy Court approval: (i) establishing noticing procedures; (ii) approving the Settlement and (iii) estimating Plaintiffs' claims. The Settlement Agreement contemplates that the forgoing components of the Settlement will be considered in successive stages. First, pursuant to the separate motion (the "**Notice Procedures Motion**") filed contemporaneously herewith, the Parties request that the Court approve proposed notice procedures with respect to the Settlement and the estimation process. Second, and contingent upon the entry of an order approving the Notice Procedures Motion (the "**Notice Procedures Order**"), the Parties will serve notice of this Motion and the Claims Estimation Motion (as defined below) in accordance with the procedures established by the Court and pursue the relief sought thereunder.



8. Through this Motion, the Parties seek entry of the Settlement Order approving the terms of the Settlement Agreement. Upon entry of the Settlement Order, the GUC Trust will pay Plaintiffs \$15 million (the “**Settlement Amount**”).

9. Pursuant to the terms of the Settlement Agreement, the GUC Trust has also filed a motion (the “**Estimation Motion**”) seeking entry of an order (the “**Claims Estimate Order**”) that would estimate the amount of Plaintiffs’ claims, in an amount that may (depending on the amount of the Court’s estimate) trigger New GM’s obligation to issue additional shares of New GM common stock (the “**Adjustment Shares**”)<sup>8</sup> pursuant to the terms of the Sale Agreement.<sup>9</sup>

10. Upon entry of the Settlement Order, in exchange for the foregoing consideration from the GUC Trust, and following compliance with extensive noticing procedures designed to provide notice to every potentially affected Plaintiff and an opportunity to object and be heard as set forth in the Notice Procedures Motion and/or contemplated by the Notice Procedures Order, all Plaintiffs will be deemed to have waived and released any rights or claims against the GUC Trust, Wilmington Trust Company as trust administrator and trustee of the GUC Trust (the “**GUC Trust Administrator**”), the Trust Monitor, the Motors Liquidation Company Avoidance Action Trust (the “**Avoidance Action Trust**”) and holders of beneficial interests in the GUC Trust (the “**Unitholders**”). By its terms, the waiver and release applies to Plaintiffs’ claims or rights,

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<sup>8</sup> Upon entry of the Claims Estimate Order, all Adjustment Shares will be placed in a fund for the exclusive benefit of Plaintiffs. The Signatory Plaintiffs will subsequently propose the allocation of the value of the Settlement Amount and the Adjustment Shares between economic loss claims and personal injury/wrongful death claims and the eligibility and criteria for payment, which shall be subject to an order of this Court after notice and an opportunity to be heard by Plaintiffs. Being defined as a Plaintiff does not assure any party that he, she, or it will receive a distribution from the Settlement Amount, the Adjustment Shares (or their value), if any, or any other consideration contained in the Settlement Fund. The GUC Trust, Unitholders, and defendants in the Term Loan Avoidance Action, waive any rights to the Settlement Amount and the Adjustment Shares.

<sup>9</sup> See concurrently-filed *Motion of Motors Liquidation Company GUC Trust to Estimate Vehicle Recall Economic Loss and Personal Injury Claims for Allowance Purposes and to Establish a Schedule for the Claims Estimation Proceeding*, dated May 2, 2018.

including any rights to any assets that are presently in the GUC Trust and any distributions that have previously been made to Unitholders (collectively, “**GUC Trust Assets**”) and to distributions that have or will be made by the Avoidance Action Trust (the “**Release**”). In so doing, the waiver and release provides finality and certainty to the GUC Trust and Unitholders (regardless of whether or in what amount, the Claims Estimate Order may ultimately be entered), protects against the risk of claw-back or recapture of prior distributions of GUC Trust Assets and eliminates delay in the GUC Trust wind-down process and distribution of assets.

11. The final component of the Settlement contemplates an estimation proceeding with respect to Plaintiffs’ claims. Pursuant to the Settlement Agreement, the GUC Trust has agreed to seek entry of a claims estimate order estimating the aggregate Allowed General Unsecured Claims against the GUC Trust. Entry of the Claims Estimate Order, as sought through the Estimation Motion, may trigger New GM’s obligation to provide the Adjustment Shares as additional consideration under the Sale Agreement. Pursuant to the terms of the Settlement, any Adjustment Shares would be set aside for the exclusive benefit of the Plaintiffs.

12. The Settlement Agreement resulted from extensive, good faith negotiations between experienced counsel to reasonably resolve the many issues arising out of the Late Claims Motions. This Court should approve the Settlement because it will substantially reduce costs and the expenditure of resources, eliminate the risk of uncertain litigation outcomes, and prevent further delay in distributions of remaining GUC Trust Assets, without disturbing the recovery expectations of other creditors and Unitholders. Moreover, the Settlement Agreement establishes a streamlined process for allowing Plaintiffs’ claims and providing Plaintiffs a source of recovery from the Settlement Amount and the Adjustment Shares. Again, regardless of whether the Claims Estimate Order is ultimately entered, the waivers and releases by Plaintiffs that are set forth in the

Settlement will be binding on all Parties, subject only to approval of the Settlement Order and payment of the Settlement Amount. In light of the inherent risks and costs associated with litigation, the Settlement Agreement is fair and clearly falls above the lowest rung in the range of reasonableness. Accordingly, the Court should enter the Settlement Order approving the Settlement Agreement pursuant to Bankruptcy Rule 9019 as a fair and equitable resolution of the on-going litigation between the Parties.

### **JURISDICTION**

13. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

14. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The statutory predicates for the relief sought in this Motion are Bankruptcy Code sections 105(a), 363, 502(c) and 1142 and Bankruptcy Rules 3002 and 9019.

### **BACKGROUND**

#### **I. Old GM's Bankruptcy and the Creation of the GUC Trust.**

16. On June 1, 2009, General Motors Corporation ("**Old GM**") and certain of its affiliates (collectively, the "**Debtors**") filed for chapter 11 bankruptcy protection in this Court and entered into an agreement (the "**Sale Agreement**") to sell substantially all of its assets to NGMCO, Inc. ("**New GM**") in exchange for, *inter alia*, New GM common stock and warrants. See In re Motors Liquidation Co., 529 B.R. at 535.

17. The Sale Agreement was amended on July 5, 2009 to, *inter alia*, add a feature requiring New GM to provide additional New GM common stock in the event that the amount of allowed general unsecured claims against the Old GM estate exceeds a threshold amount (the

“**Purchase Price Adjustment**”). See AMSPA § 3.2(c).<sup>10</sup> Specifically, the Purchase Price Adjustment provides that if the Bankruptcy Court issues an order finding that the estimated aggregate allowed general unsecured claims against the Old GM estate exceeds \$35 billion, then within five business days thereof New GM will issue Adjustment Shares to the GUC Trust. See *id.* If such order estimates the aggregate allowed general unsecured claims at or in excess of \$42 billion, New GM must issue 30 million Adjustment Shares, the maximum amount of Adjustment Shares that may be required under the AMSPA. See *id.*

18. On July 5, 2009, the sale was approved by the Bankruptcy Court. See *Elliott*, 829 F.3d at 146-47.

19. In September 2009, the Court established November 30, 2009 (the “**Bar Date**”) as the deadline for filing proofs of claim against Old GM. See *In re Motors Liquidation Co.*, 529 B.R. at 535.

20. On March 29, 2011, the Court entered an order confirming the Plan, which, among other things, authorized the creation of the GUC Trust pursuant to the terms set forth in the GUC Trust Agreement. See *id.* at 536.

21. Pursuant to the Plan, the GUC Trust Agreement, and a side letter by and between the GUC Trust, the Debtors, New GM, and FTI Consulting (as trust monitor of the GUC Trust) dated September 23, 2011 (the “**Side Letter**”), the GUC Trust was granted exclusive authority to object to the allowance of general unsecured claims, seek estimation of the amount of allowed general unsecured claims, and seek Adjustment Shares from New GM. See Plan §§ 7.1(b), 7.3; GUC Trust Agreement § 5.1.

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<sup>10</sup> See *Second Amended and Restated Master Sale and Purchase Agreement, by and among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem, Inc., as Sellers, and NGMCO, Inc., as Purchaser, dated as of June 26, 2009* (the “**AMSPA**”).

22. In February 2012, the Court entered an order providing that any claims filed after entry of the order would be deemed disallowed unless, *inter alia*, the claimant obtained leave of the Court or written consent of the GUC Trust.<sup>11</sup>

23. As of March 31, 2018, the total amount of Allowed General Unsecured Claims against the Debtors' estate was \$31,855,431,837.00, approximately \$3.14 billion below the threshold for triggering the issuance of Adjustment Shares under the AMSPA.<sup>12</sup>

## **II. The Recalls and Subsequent Proceedings In the Bankruptcy Court and Second Circuit.**

24. In February and March 2014, over four years after the Bar Date, New GM publicly disclosed the existence of the Ignition Switch Defect and issued a recall, NHTSA Recall Number 14V-047, impacting approximately 2.1 million vehicles. After this first wave of recalls, New GM issued additional recalls in June, July and September of 2014 concerning defective ignition switches affecting approximately 10 million additional vehicles, NHTSA Recall Numbers 14V-355, 14V-394, 14V-400, and 14V-540.

25. New GM issued a multitude of other recalls for safety defects throughout 2014. These included a recall issued in March pertaining to approximately 1.2 million vehicles with defective side airbags, NHTSA Recall Number 14V-118, and another recall issued in March pertaining to over 1.3 million vehicles with defective power steering, NHTSA Recall Number 14V-153.

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<sup>11</sup> See *Order Approving Motion Pursuant to Bankruptcy Rule 3003 and Section 105(a) of the Bankruptcy Code for an Order Disallowing Certain Late Filed Claims*, dated February 8, 2012 [ECF No. 11394] (the "**Late Filed Claims Order**").

<sup>12</sup> See *Motors Liquidation Company GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of March 31, 2018, dated Apr. 30, 2018* [ECF No. 14290].

26. After the issuance of these recalls (collectively, the “**Recalls**”), owners and lessees of defective Old GM and New GM vehicles filed lawsuits against New GM. New GM sought to enjoin that litigation by filing motions to enforce the Sale Order in the Bankruptcy Court. Specifically, New GM filed the following motions:

- *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction*, dated Apr. 21, 2014 [ECF No. 12620] (the “**Ignition Switch Plaintiffs Motion to Enforce**”);
- *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated Aug. 1, 2014 [ECF No. 12807] (the “**Ignition Switch Pre-Closing Accident Plaintiffs Motion to Enforce**”)<sup>13</sup>;
- *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated Aug. 1, 2014 [ECF No. 12808] (the “**Non-Ignition Switch Plaintiffs Motion to Enforce**” and together with the Ignition Switch Plaintiffs Motion to Enforce and the Ignition Switch Pre-Closing Accident Plaintiffs Motion to Enforce, the “**Motions to Enforce**”).

27. The Ignition Switch Pre-Closing Accident Plaintiffs Motion to Enforce was also filed in conjunction with the launch of the Feinberg Protocol which “provided eligible Plaintiffs with an alternative (*i.e.*, a source of recovery under the Feinberg Protocol) to the enforcement of the Sale Order and Injunction against them.” According to the Ignition Switch Pre-Closing Accident Plaintiffs Motion to Enforce, the Feinberg Protocol was developed and designed “for the

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<sup>13</sup> The claims sought to be enjoined in that motion were limited to personal injury and wrongful death claims resulting from vehicles with the Ignition Switch Defect (*i.e.* Recall No. 14V-047).

submission, evaluation, and settlement of death or physical injury claims resulting from accidents allegedly caused by defective ignition switches in certain vehicles.” *Ignition Switch Pre-Closing Accident Plaintiffs Motion to Enforce* [ECF No. 12807] at 2.

28. In large part, the prosecution of the Motions to Enforce set in motion litigation over Plaintiffs’ late claims that was piecemeal and disjointed. In furtherance of resolution of the Ignition Switch Plaintiffs Motion to Enforce, on or about July 11, 2014, the Bankruptcy Court entered a *Supplemental Scheduling Order Regarding (I) Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction, (II) Objection Filed by Certain Plaintiffs in Respect Thereto, and (III) Adversary Proceeding No. 14-01929* [ECF No. 12770] (the “**Supplemental Scheduling Order**”)<sup>14</sup>. The Supplemental Scheduling Order identified four threshold issues (the “**2014 Threshold Issues**”) to be determined, including whether any of the claims in these actions were claims against Old GM and, if so, whether such claims should “nevertheless be disallowed/dismissed on grounds of equitable mootness . . . .” *Id.*<sup>15</sup> The Supplemental Scheduling Order also required the parties to submit to the Bankruptcy Court on or before August 8, 2014 agreed upon stipulations of fact and to jointly identify any facts that could not be stipulated to with respect to the Four Threshold Issues<sup>16</sup>, and established a briefing schedule for the Four Threshold Issues.

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<sup>14</sup> The Supplemental Scheduling Order superseded the *Scheduling Order Regarding (I) Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court’s July 5, 2009 Sale Order and Injunction, (II) Objection Filed by Certain Plaintiffs in Respect Thereto, and (III) Adversary Proceeding No. 14-01929* entered on May 16, 2014 [ECF No. 12697] (the “**May 2014 Scheduling Order**”). Among other things, the May 2014 Scheduling Order identified five (5) threshold issues to be resolved and required the submission of agreed-upon stipulations of fact to the Bankruptcy Court by July 1, 2014.

<sup>15</sup> Notably, the only vehicles covered by the 2014 Threshold Issues briefing were those with the Ignition Switch Defect.

<sup>16</sup> On August 8, 2014, New GM, certain Plaintiffs by and through Designated Counsel, the Groman Plaintiffs, the GUC Trust, and the Unitholders filed the *Agreed and Disputed Stipulations of Fact Pursuant to the Court’s Supplemental Scheduling Order, Dated July 11, 2014* [ECF No. 12826] (the “**August 8, 2014 Stipulations of Fact**”).

29. This schedule was later applied to the Ignition Switch Pre-Closing Accident Plaintiffs Motion to Enforce, which was limited to accidents involving vehicles with the Ignition Switch Defect. See Scheduling Order Regarding Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits [ECF No. 12897].

30. On April 15, 2015, the Bankruptcy Court issued its *Decision on Motion to Enforce Sale Order, In re Motors Liquidation Co.*, 529 B.R. 510 (the “Enforcement Decision”) [ECF No. 13109]. The Bankruptcy Court held that the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs were known creditors who did not receive constitutionally adequate notice of the Sale or Bar Date. See In re Motors Liquidation Co., 529 at 574.

31. The Bankruptcy Court further held that while “late claims filed by the Plaintiffs might still be allowed, assets transferred to the GUC Trust under the Plan could not now be tapped to pay them” under the doctrine of equitable mootness. In re Motors Liquidation Co., 529 B.R. at 529; see also June 2015 Judgment ¶ 6. On direct appeal, the Second Circuit vacated this equitable mootness ruling as an advisory opinion. See Elliott, 829 F.3d at 168-69.

32. The Non-Ignition Switch Plaintiffs Motion to Enforce, which was limited to plaintiffs asserting economic loss claims and did not cover accident plaintiffs, was deferred pending resolution of the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs Motions to Enforce. See In re Motors Liquidation Co., 529 B.R. at 523. No motion to enforce was filed against Non-Ignition Switch Pre-Closing Accident Plaintiffs. It has not yet been determined whether any Non-Ignition Switch Plaintiffs or Non-Ignition Switch Pre-Closing Accident Plaintiffs suffered a due process violation in connection with the entry of the Sale Order or the Bar Date Order.



**III. Developments in the Bankruptcy Court Following the Second Circuit Opinion.**

33. On or about December 13, 2016, on remand from the Second Circuit's opinion vacating the equitable mootness ruling and making clear the due process violation, the Bankruptcy Court issued the *Order to Show Cause Regarding Certain Issues Arising from Lawsuits with Claims Asserted Against General Motors LLC That Involve Vehicles Manufactured by General Motors Corporation* [ECF No. 13802] (the "**Order to Show Cause**"). The Order to Show Cause identified five (5) threshold issues (the "**2016 Threshold Issues**") for resolution in light of the Second Circuit decision. Relevant here is the issue of whether "the Ignition Switch Plaintiffs and/or Non-Ignition Switch Plaintiffs [defined in the Order to include plaintiffs asserting both economic loss and personal injury or wrongful death claims] satisfy the requirements for authorization to file late proof(s) of claim against the GUC Trust and/or are such claims equitably moot (the "**Late Proof of Claim Issue**")."<sup>17</sup>

34. The Order to Show Cause also established a December 22, 2016 deadline to file motions seeking authority to file late claims ("**Late Claims Motions**"). See Order to Show Cause at 5 ¶ 1. No additional issues (such as class certification, discovery, or the merits of a late proof of claim) would be addressed in these motions. See id. In addition, the procedures provided that briefing and adjudication of any Late Claims Motions filed by Non-Ignition Switch Plaintiffs and Pre-Closing Accident Plaintiffs would be stayed pending resolution of the other 2016 Threshold Issues. See id. at 5 ¶ 2.

35. In accordance with the Order to Show Cause, on December 22, 2016, the Ignition Switch Plaintiffs, certain Non-Ignition Switch Plaintiffs, and certain Ignition Switch Pre-Closing

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<sup>17</sup> *Order to Show Cause Regarding Certain Issues Arising from Lawsuits with Claims Asserted Against General Motors LLC ("New GM") that Involve Vehicles Manufactured by General Motors Corporation ("Old GM")*, dated Dec. 13, 2016 [ECF No. 13802], at 2-3.

Accident Plaintiffs filed Late Claims Motions.<sup>18</sup> The motions attached proposed proofs of claim, including proposed class proofs of claim asserted on behalf of purported class representatives for Ignition Switch Plaintiffs and Non-Ignition Switch Plaintiffs, and 175 individual proofs of claim on behalf of certain Ignition Switch Pre-Closing Accident Plaintiffs. See id.<sup>19</sup> Certain other Plaintiffs subsequently filed joinders to the Late Claims Motions pursuant to the terms of the Order to Show Cause.

36. Thereafter, in connection with the Ignition Switch Plaintiffs' and Ignition Switch Pre-Closing Accident Plaintiffs' Late Claims Motions, the Parties participated in two status conferences before the Bankruptcy Court, engaged in preliminary rounds of discovery, and filed briefs addressing two preliminary issues raised in the Late Claims Motions: (i) whether relief can be granted absent a showing of excusable neglect under the Pioneer factors; and (ii) the applicability of any purported agreements with the GUC Trust or other tolling arrangements to toll timeliness objections (the "**Initial Late Claims Motions Issues**").<sup>20</sup> Subsequent to such briefing, certain Plaintiffs who had not previously appeared before the Bankruptcy Court filed motions seeking authority to file late proofs of claim.

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<sup>18</sup> See Motion for an Order Granting Authority to File Late Class Proofs of Claim, dated Dec. 22, 2016 [ECF No. 13806] (the "**Economic Loss Late Claim Motion**"); Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths, dated Dec. 22, 2016 [ECF No. 13807].

<sup>19</sup> On April 24, 2018, the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs filed amended proposed class proofs of claim. See Notice of Filing of Amended Exhibits to Motion for an Order Granting Authority to File Late Class Proofs of Claim, dated Apr. 25, 2018 [ECF No. 14280].

<sup>20</sup> See Order Establishing, Inter Alia, Briefing Schedule for Certain issues Arising from Late Claim Motions Filed by Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Certain Ignition Switch Pre-Closing Accident Plaintiffs, dated Mar. 2, 2017 [ECF No. 13869]; Opening Brief by General Motors LLC with Respect to Initial Late Claim Motions Issues, dated Mar. 6, 2017 [ECF No. 13871]; The Ignition Switch Plaintiffs' Brief on the Initial Late Claim Motions Issues, dated Mar. 6, 2017 [ECF No. 13872]; Opening Brief of GUC Trust Administrator and Participating Unitholders on the Applicability of Pioneer and Tolling to Plaintiffs' Motions to File Late Claims, dated Mar. 6, 2017 [ECF No. 13873]; Brief on Applicability of Pioneer and Tolling Issues in Connection with Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths, dated Mar. 6, 2017 [ECF No. 13874].

#### IV. Plaintiffs' Alleged Claims Against Old GM.

37. The proposed class claims addressed in the Ignition Switch Plaintiffs' and certain Non-Ignition Switch Plaintiffs' Late Claims Motions (the "**Proposed Class Claims**") allege that Old GM knew about the Ignition Switch Defect, other defects in ignition switches, defects in side airbags, and defects in power steering for years prior to the Bar Date.<sup>21</sup> The Proposed Class Claims further allege that Old GM concealed the existence of these defects, causing Plaintiffs to overpay for defective vehicles and bear the costs of repairs while Old GM reaped the benefit of selling defective vehicles at inflated prices and avoiding the costs of a recall.<sup>22</sup>

38. Based on these allegations, the Ignition Switch Plaintiffs and Non-Ignition Switch Plaintiffs assert claims against the Old GM estate under the laws of each of the 50 states and the District of Columbia for: (i) fraudulent concealment; (ii) unjust enrichment; (iii) consumer protection claims; (iv) breach of the implied warranty of merchantability; and (v) negligence.<sup>23</sup>

39. The Ignition Switch Pre-Closing Accident Plaintiffs assert personal injury and wrongful death claims arising from accidents they assert were caused by the Ignition Switch Defect (the "**Personal Injury Claims**," and together with the Proposed Class Claims, the "**Claims**").<sup>24</sup>

40. Additionally, certain Pre-Closing Accident Plaintiffs asserting personal injury and wrongful death claims arising from accidents they assert were caused by vehicles subject to Recall Nos. 14V-355, 14V-394, 14V-400, 14V-540 (and who are identified by name and Recall Number on Schedule 1 to the Settlement Agreement, and are Signatory Plaintiffs to such agreement) have

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<sup>21</sup> See Amended Exhibit A to the Economic Loss Late Claim Motion (the "**Proposed Ignition Switch Class Claim**"), ¶¶ 57-285; Exhibit B to the Economic Loss Late Claim Motion (the "**Proposed Non-Ignition Switch Class Claim**") ¶¶ 38-175.

<sup>22</sup> See, e.g., Proposed Ignition Switch Class Claim ¶ 374; Proposed Non-Ignition Switch Class Claim ¶ 278.

<sup>23</sup> See Proposed Ignition Switch Class Claim ¶¶ 358-1697; Proposed Non-Ignition Switch Class Claim ¶¶ 262-1744.

<sup>24</sup> See, e.g., *Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths*, dated Dec. 22, 2016 [ECF No. 13807].

informed the GUC Trust that they intend to file a Supplemental Late Claims Motion on or before May 31, 2018. The Supplemental Late Claims Motions will be settled under the Settlement Agreement.

41. New GM has consistently taken the position that any such claims are properly asserted against the GUC Trust and not against New GM.<sup>25</sup>

42. Subsequent to filing the Late Claims Motions, counsel for the proposed class representatives for the Ignition Switch Plaintiffs, the proposed class representatives for certain Non-Ignition Switch Plaintiffs, and counsel for certain Pre-Closing Accident Plaintiffs provided the GUC Trust with materials and expert reports describing in detail the factual background for their claims, the alleged viability of the asserted claims and the alleged amount of damages (the **“Proffered Evidence”**).

43. In addition, they provided a report by Stefan Boedeker, an expert on surveys and statistical sampling, analyzing the amount of alleged damages for the Ignition Switch Plaintiffs’ and certain Non-Ignition Switch Plaintiffs’ claims based on a conjoint analysis conducted by Mr. Boedeker and Berkeley Research Group.

44. Conjoint analysis is a set of econometric and statistical techniques developed to study consumer preferences and is widely used as a market research tool. In a conjoint analysis, study participants review a set of products with different attributes (such as a vehicle shown in different colors) and choose which product they would prefer to purchase. The collected data can

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<sup>25</sup> The record is replete with attempts by New GM to saddle the Old GM estate with these potentially massive claims. “To the extent Plaintiffs can prove that they are entitled to any relief, the appropriate remedy is to permit them to seek allowance of an unsecured claim against the Old GM bankruptcy estate.” Dkt. 12981 (New GM’s 2014 Threshold Issues Br.) at 53; “To the extent they had any claim, it was against Old GM and they retained that claim after the 363 Sale.” *Id.* at 36; “Every one of their claims, the economic loss plaintiffs’ claims, is a claim that’s assertable against Old GM as it relates to an Old GM vehicle.” Hr’g Tr. Feb. 17, 2015 at 59:17-19 (New GM counsel Arthur Steinberg).

be used to determine market preferences and the value consumers place on particular attributes of a product. Here, the alleged amount of damages for economic loss claims was determined by using a conjoint analysis to evaluate the difference in value that consumers placed on an Old GM vehicle without a defect as compared to an identical vehicle with a defect.

45. Certain Pre-Closing Accident Plaintiffs provided materials describing the personal injury and wrongful death claims of certain plaintiffs and demonstrating the alleged value of these claims based on exemplar verdict amounts. The valuation of damages was assessed and approved by W. Mark Lanier, an experienced trial attorney recognized as a leader in the field.

46. The valuation of these plaintiffs' asserted damages in the Proffered Evidence is well in excess of the amount necessary to trigger New GM's obligation to issue the Adjustment Shares under the AMSPA. While the GUC Trust disputes that Plaintiffs are entitled to this (or any) level of damages, it recognizes that there is no guarantee that it would be able to defeat or reduce such damages claims if the issues were litigated.

47. Likewise, New GM has presented the GUC Trust Administrator with expert reports and other evidence attempting to discredit the Proffered Evidence and also support its position in these bankruptcy cases and other related litigation ("**New GM Evidence**"). New GM does not challenge the damage valuation method, rather New GM alleges that there is simply no basis for economic loss or personal injury damages.

48. While the GUC Trust believes there are legal and factual arguments that refute the damages asserted in the Proffered Evidence, it recognizes that there is no guarantee that it would be able to defeat or reduce such damages claims if the issues were litigated. At a minimum, the GUC Trust believes that such litigation would be expensive and time consuming. Thus, after reviewing the Proffered Evidence, the New GM Evidence, and in consultation with the GUC Trust

Monitor, and considering the benefits of the Settlement as a whole to the Unitholders to whom it owes its fiduciary duty, the GUC Trust has concluded that the Settlement falls well within the range of reasonableness.

**V. The Settlement Agreement.**

49. Following the filing of the Late Claims Motions, the Parties engaged in extensive negotiations to resolve the numerous complex issues raised by Plaintiffs' claims against the Old GM estate and the assets held and previously distributed by the GUC Trust. These include negotiations held before and after the Settlement Decision, which denied Plaintiffs' motion to enforce the terms of a prior, unsigned draft of a settlement with Plaintiffs. After the Court issued the Settlement Decision, and after the expiration of the forbearance agreement between the GUC Trust and New GM, the GUC Trust conducted extensive additional negotiations with both the Plaintiffs and New GM. The Trust also reviewed voluminous materials regarding the merits and potential value of Plaintiffs' claims that were provided by each side of the dispute (i.e., Plaintiffs and New GM). As a result of these additional negotiations, and after securing Plaintiffs' consent to changes addressing concerns of the Trust regarding the terms of the prior proposed agreement, the GUC Trust and Plaintiffs executed the Settlement Agreement.

50. The Settlement Agreement resolves the Late Claims Motions (including the Initial Late Claim Motions Issues), the Late Proof of Claim Issue, the allowance of Plaintiffs' claims, and Plaintiffs' rights to GUC Trust Assets. The Settlement Agreement also places the asserted claims of all Plaintiffs on the same track, correcting the disjointed approach introduced by New GM.

51. The key terms of the Settlement Agreement are as follows:<sup>26</sup>

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<sup>26</sup> This summary of the Settlement Agreement is qualified in its entirety by the terms and provisions of the Settlement Agreement. To the extent that there are any inconsistencies between the description of the Settlement Agreement contained in the Motion and the terms and provisions of the Settlement Agreement, the Settlement Agreement shall control. A copy of the Settlement Agreement is attached hereto as **Exhibit A**.

- a. The GUC Trust agrees to pay the reasonable costs and expense for Court-approved notice of the Motion and the Claims Estimation Motion in an amount not to exceed \$6 million. The Signatory Plaintiffs agree to pay any required noticing costs in excess of \$6 million.
- b. The Settlement Agreement becomes effective on the date the Settlement Order becomes a Final Order (the “**Settlement Effective Date**”), provided, however, that from and after the date the Settlement Order is entered by the Bankruptcy Court, the GUC Trust may waive the requirement that the Settlement Order be a Final Order.
- c. Within five (5) business days of the Settlement Effective Date, the GUC Trust will irrevocably pay \$15,000,000 (the “**Settlement Amount**”) into a trust, fund or other vehicle (the “**Settlement Fund**”) for the exclusive benefit of Plaintiffs. All Unitholders, all defendants in the Term Loan Avoidance Action, and all holders of Allowed General Unsecured Claims, other than the Plaintiffs, will be deemed to irrevocably waive and release any and all rights to the Settlement Amount (the “**GUC Waiver Provision**”).
- d. Contemporaneously with payment of the Settlement Amount, the Plaintiffs will be deemed to irrevocably waive and release all claims against the GUC Trust, including a release of any rights to prior distributions of or current GUC Trust Assets and any rights to distributions by the Motors Liquidation Company Avoidance Action Trust (the “**Waiver Provision**”). For the avoidance of doubt, the Settlement Agreement and Settlement Order define “Plaintiffs” to include all persons who now have, or in the future could have, claims against the Old GM estate related to any of the Recalls, such that the Waiver Provision shall be applicable to all such parties whether or not they have asserted any claims against the Old GM estate or the GUC Trust to date. However, being defined as a Plaintiff does not assure any party that he, she, or it will receive a distribution from the Settlement Amount, the Adjustment Shares (or their value), if any, or any other consideration contained in the Settlement Fund.
- e. In light of the benefits of the Settlement, the GUC Trust agrees that, subject to the entry of the Settlement Order, it will seek the entry of a Claims Estimate Order that (i) estimates the aggregate allowed General Unsecured Claims of Plaintiffs against Sellers and/or the GUC Trust pursuant to Section 5.1 of the GUC Trust Agreement, Section 7.3 of the Plan, Section 3.2(c) of the AMSPA and the Side Letter in an amount that, as of the date of the Estimation Order, could equal or exceed \$10 billion, thus triggering the issuance of the maximum amount of the Adjustment Shares, and (ii) directs that, subject to Section 2.13 of the Settlement Agreement, any such Adjustment Shares issued as a result of an Estimation Order, or the value of such Adjustment Shares be promptly delivered by New GM to the Settlement Fund. Certain Pre-Closing Accident Plaintiffs consent to estimation of their personal injury and wrongful death claims by this Court solely for the purposes of determining the aggregate Allowed General Unsecured Claims for a Claims Estimate Order.

- f. Contemporaneously with payment of the Settlement Amount, all Unitholders, all defendants in the Term Loan Avoidance Action, and all holders of Allowed General Unsecured Claims, other than the Plaintiffs, will be deemed to irrevocably waive and release any and all rights to the Adjustment Shares.
- g. Subject to notice, an opportunity for Plaintiffs to object and approval by the Bankruptcy Court, the Signatory Plaintiffs will determine the overall allocation of the value of the Settlement Fund between economic loss claims and personal injury/wrongful death claims, and the eligibility and criteria for payment. Notice of the proposed allocation and proposed eligibility and criteria for payment will be posted on a settlement website, along with information about the hearing date and how and when to assert any objections.
- h. Nothing in the Settlement Agreement is intended to waive any claims against New GM or to be an election of remedies against New GM; nor does the Settlement Agreement or any payments made in connection therewith represent full satisfaction of any claims against Old GM, unless and until such claims are in fact paid in full from every available source; provided, however, that in no event shall any Plaintiff be permitted to seek any further payment or compensation from the GUC Trust in respect of their claims or otherwise, other than the Settlement Amount and the Adjustment Shares. Except as mandated otherwise under applicable law, nothing in the Settlement Agreement shall waive any claims that any Plaintiff may have against New GM or constitute an election of remedies by any Plaintiff, and neither the Settlement Amount nor the Adjustment Shares (nor any distribution thereof to any Plaintiff) shall represent full and final satisfaction of any claim that any Plaintiff may have against New GM, all of which are expressly reserved. The Bankruptcy Court's estimate of the aggregate Allowed General Unsecured Claims in the Claims Estimate Order shall not operate as a cap on any of the claims of any of the Plaintiffs against New GM.

### **RELIEF REQUESTED**

52. By this Motion, the Parties respectfully request that this Court approve the actions taken by the GUC Trust Administrator set forth in the Settlement Agreement, and enter the Settlement Order substantially in the form attached to this Motion as **Exhibit B**.



**BASIS FOR RELIEF REQUESTED**

**I. The Court Should Find that Entry into the Settlement is an Appropriate Exercise of the GUC Trust Administrator’s Authority and Approve Actions Taken by the GUC Trust Administrator in Connection Therewith Pursuant to Section 8.1(e) of the GUC Trust Agreement.**

53. The GUC Trust Administrator seeks a determination by the Court that entry into the Settlement and estimation of Allowed General Unsecured Claims as described in the Settlement Agreement is an appropriate exercise of the GUC Trust Administrator’s rights, powers, and/or privileges.

54. “The practice is well established by which trustees seek instructions from the court, given upon notice to creditors and interested parties, as to matters which involve difficult questions of judgment.” Mosser v. Darrow, 341 U.S. 267, 274 (1951); see also In the Matter of the Application of U.S. Bank Nat’l Ass’n, No. 651625/2018, NYSCEF No. 1 (N.Y. Sup. Ct. April 4, 2018) (petition seeking an order, following an estimation proceeding, that instructs and authorizes trustees to make distributions pursuant to method proposed); In re Am. Home Mort. Inv. Trust 2005-2, No. 14 Civ. 2494 (AKH), 2014 U.S. Dist. LEXIS 111867, at \*29-30 (explaining that “[t]rust instruction proceedings are a well-established procedure by which trustees (and other affected parties) can seek judicial guidance from the court about how to resolve immediate and difficult issues of interpretation of governing documents”), In re Peierls Family Inter Vivos Trusts, 59 A.3d 471, 477 (Del. Ch. 2012) (noting that a “request for judicial relief involving a trust can be appropriate in many circumstances”).

55. Judge Wiles recently considered a similar request for instruction in In re Tronox Inc., No. 09-10156 (MEW), 2015 Bankr. LEXIS 1974 (Bankr. S.D.N.Y. June 17, 2015). In that matter, the trustee of the Tronox Incorporated Tort Claims Trust (established under the Tronox debtors’ plan of reorganization, and governed by a trust agreement and a set of trust distribution

procedures) filed a motion seeking instruction regarding whether the trustee was correct with respect to certain past action. See id. at \*1-2. The court noted that because the trustee was seeking “‘comfort’ as to actions already taken rather than ... ‘instructions’ as to what the [t]rustee should do going forward in administering the [t]rust,” it had “some skepticism as to whether the motion ... [was] an appropriate request for instructions.” Id. at \*21. The court based its skepticism on the notion that “[o]rdinarily a [t]rustee seeks instructions when it has not yet taken action and where the [t]rustee is unsure as to what to do, and may even face liability for an incorrect choice.” Id. (citations omitted). The court further noted that the request before it was “not really a request for ‘instructions’ as to how to interpret the existing [t]rust documents[,]” but “more of a request for an advisory opinion as to whether a proposed change to the” trust distribution procedures “would be consistent (or inconsistent) with the terms of the [debtors’ plan] and the vested rights of claimants.” Id. at \*22. Noting, however, that it was “plain that further litigation – and thereby further delays in distributions to the beneficiaries of the [t]rust, who [had] already been waiting for many years – [were] inevitable unless some binding clarification of these issues is provided[,]” and based upon the conclusion that the court, under the plan, had “continuing jurisdiction over any issue relating to the interpretation and application of the [t]rust [a]greement” and the trust distribution procedures, the court found that it was “appropriate” to exercise its jurisdiction and issue the ruling as requested. Id. at \*23.

56. Here, the GUC Trust Administrator is specifically authorized to seek guidance from the Court in this matter pursuant to § 8.1(e) of the GUC Trust Agreement, which provides, in relevant part, that

where the GUC Trust Administrator determines, in its reasonable discretion, that it is necessary, appropriate, or desirable, the GUC Trust Administrator will have the right to submit to the Bankruptcy Court ... any question or questions regarding any specific action

proposed to be taken by the GUC Trust Administrator with respect to the [GUC Trust Agreement], the GUC Trust, or the GUC Trust Assets .... Pursuant to the Plan, the Bankruptcy Court has retained jurisdiction for such purposes and may approve or disapprove any such proposed action upon motion by the GUC Trust Administrator.

GUC Trust Agreement § 8.1(e).

57. The GUC Trust Administrator has determined that, given the import of both the Settlement and the estimation of allowed General Unsecured Claims in the manner described in the Estimation Motion on the forward trajectory of this matter, it is necessary, appropriate, and desirable to ask the Court at this time whether the actions the GUC Trust Administrator proposes to take in connection therewith are permissible and appropriate. As noted, the GUC Trust Administrator has the exclusive right to object to General Unsecured Claims, seek estimation of the amount of allowed General Unsecured Claims, and seek Adjustment Shares from New GM. Plan §§ 7.1(b), 7.3; GUC Trust Agreement § 5.1. Moreover, similar to the circumstances extant in Tronox, the Court has continuing jurisdiction to interpret, implement, or enforce the GUC Trust Agreement. Plan § 11.1(i); see also GUC Trust Agreement § 8.1(e). Unlike the Tronox trustee, however, the GUC Trust Administrator is seeking instruction regarding actions it proposes to take based on its interpretation of the relevant documents. Based on the foregoing, it is well within the Court's authority to issue a ruling "approv[ing] ... [the described] proposed action" by the GUC Trust Administrator. GUC Trust Agreement § 8.1(e).

**II. The Court Should Authorize the Reallocation of \$15 Million of GUC Trust Funds.**

58. As noted above, under the terms of the Settlement, the GUC Trust is obligated to pay \$15 million to the Settlement Fund. Pursuant to Section 5.5 of the GUC Trust Agreement, the GUC Trust Administrator is afforded the flexibility to “hold back” from distributions (with the approval of the GUC Trust Monitor)<sup>27</sup> assets that would otherwise be distributed to GUC Trust Beneficiaries to reserve for unresolved disputed claims. *See* GUC Trust Agreement § 5.5. The GUC Trust has historically held back an amount sufficient to pay \$50 million in disputed claims, which totals approximately \$14.8 million. Since the only remaining dispute is with the Plaintiffs, the GUC Trust seeks authority to use the disputed claims holdback to pay the amount required under the Settlement Agreement. Section 6.1 of the GUC Trust Agreement specifically provides the GUC Trust Administrator with the ability to seek Bankruptcy Court approval (after consultation with the GUC Trust Monitor) to redesignate GUC Trust Distributable Assets.

59. Accordingly, the GUC Trust submits that, pursuant to Sections 5.5 and 6.1 of the GUC Trust Agreement, the request to reallocate \$15 million of otherwise distributable assets for the purposes of funding the Settlement should be approved pursuant to the terms of the GUC Trust Agreement.

**III. The Court Should Approve the Settlement Agreement Pursuant to Bankruptcy Rule 9019.**

60. Bankruptcy Rule 9019(a) provides, in part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). This Court also has authority to approve a settlement under Bankruptcy Code section

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<sup>27</sup> As required by Section 6.1 of the GUC Trust Agreement, the GUC Trust Administrator has consulted with the GUC Trust Monitor with respect to the proposed reallocation and use of distributable cash. GUC Trust Agreement § 6.1. The GUC Trust Monitor has indicated that it supports the relief requested herein.

105(a), which empowers it to issue any order that is “necessary or appropriate.” 11 U.S.C. § 105(a).

61. The authority to approve a compromise or settlement is within the sound discretion of the Court. See Newman v. Stein, 464 F.2d 689, 692 (2d Cir. 1972). The Court should exercise its discretion “in light of the general public policy favoring settlements.” In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998) (citation omitted); see also Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994) (“[T]he general rule [is] that settlements are favored and, in fact, encouraged . . . .” (citation omitted)).

62. When exercising its discretion, the Court must determine whether the settlement is fair and equitable, reasonable, and in the best interests of the estate. See, e.g., Airline Pilots Ass’n, Int’l v. Am. Nat’l Bank & Tr. Co. (In re Ionosphere Clubs, Inc.), 156 B.R. 414, 426 (S.D.N.Y. 1993), aff’d, 17 F.3d 600 (2d Cir. 1994); In re Purofied Down Prods. Corp., 150 B.R. 519, 523 (S.D.N.Y. 1993). Where “the integrity of the negotiation process is preserved, a strong initial presumption of fairness attaches to the proposed settlement . . . .” In re Hibbard, 217 B.R. at 46.

63. The Court need not decide the numerous issues of law and fact raised in the underlying dispute, “but must only ‘canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.’” In re Adelphia Commn’cs Corp., 327 B.R. 143, 159 (Bankr. S.D.N.Y. 2005) (quoting In re W.T. Grant, Co., 699 F.2d 599, 608 (2d Cir. 1983)); see also Purofied, 150 B.R. at 522 (“[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying [dispute] . . . .”).

64. The Court evaluates whether the Settlement Agreement is fair and equitable based on “the probabilities of ultimate success should the claim be litigated,” and “an educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of

collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

65. Courts in this jurisdiction consider the following Iridium factors in determining whether approval of a settlement is warranted:

(1) the balance between the litigation’s possibility of success and the settlement’s future benefits; (2) the likelihood of complex and protracted litigation, “with its attendant expense, inconvenience, and delay,” including the difficulty in collecting on the judgment; (3) “the paramount interests of the creditors,” including each affected class’s relative benefits “and the degree to which creditors either do not object to or affirmatively support the proposed settlement”; (4) whether other parties in interest support the settlement; (5) the “competency and experience of counsel” supporting, and “[t]he experience and knowledge of the bankruptcy court judge” reviewing, the settlement; (6) “the nature and breadth of releases to be obtained by officers and directors”; and (7) “the extent to which the settlement is the product of arm’s length bargaining.”

Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (citations omitted).

66. The Settlement Agreement falls well within the range of reasonableness and satisfies each of the Iridium factors as set forth below. Thus, the Settlement Agreement should be approved under Bankruptcy Rule 9019.

**A. The Settlement’s Benefits Outweigh the Likelihood of Success in Protracted Litigation over Numerous, Complex Issues.**

67. The first two Iridium factors—(1) the balance between the litigation’s likelihood of success and the settlement’s benefits; and (2) the likelihood of complex and protracted litigation—are easily met. As detailed below, continued litigation over Plaintiffs’ claims raises significant, complex issues, has an uncertain outcome, and would be costly and time consuming. Conversely, the benefits of near-term, certain resolution are clear.

**1. Litigation over Plaintiffs' Claims Raises Numerous Complex Issues.**

68. One complex, contentious issue raised by the litigation over Plaintiffs' claims is whether the Court should grant Plaintiffs authority to file late claims and class claims under the Late Filed Claims Order. See Late Filed Claims Order at 1-2.

69. As an initial matter, there is a strong dispute over the standard for obtaining leave to file late claims. Certain Plaintiffs have argued that creditors may assert late claims based solely on a showing that they have suffered a due process violation related to the Bar Date.<sup>28</sup> The GUC Trust has taken the position that Plaintiffs are precluded from asserting late claims because of Plaintiffs' strategic delay in pursuing claims against the GUC Trust after the Recalls.<sup>29</sup>

70. The Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs have also asserted that they can meet the Pioneer factors for demonstrating excusable neglect. Of the four Pioneer factors, the one given the most weight is the reason for the delay in filing claims, including whether the delay was in the reasonable control of the movant. See In re Residential Capital, LLC, Case No. 12-12020 (MG), 2015 WL 515387, at \*5 (Bankr. S.D.N.Y. Feb. 6, 2015). The Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs have argued that a debtor's failure to provide actual notice to a known creditor is evidence that any delay was not in control of the creditor. The GUC Trust, in turn, has argued that the delay here is attributable to Plaintiffs' voluntary strategic decision, made after the Recalls, to pursue New GM and not the GUC Trust. In response, the Plaintiffs have argued that, among other things, the February 2012

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<sup>28</sup> See, e.g., The Ignition Switch Plaintiffs' Brief on the Initial Late Claim Motions Issues, dated Mar. 6, 2017 [ECF No. 13872]; Brief on Applicability of Pioneer and Tolling Issues in Connection with Omnibus Motion by Certain Ignition Switch Pre-Closing Accident Plaintiffs for Authority to File Late Proofs of Claim for Personal Injuries and Wrongful Deaths, dated Mar. 6, 2017 [ECF No. 13874].

<sup>29</sup> See Opening Brief of GUC Trust Administrator and Participating Unitholders on the Applicability of Pioneer and Tolling to Plaintiffs' Motions to File Late Claims, dated Mar. 6, 2017 [ECF No. 13873].

order effectively precluded the filing of late claims until the Second Circuit vacated the equitable mootness ruling.

71. Although Non-Ignition Switch Plaintiffs and Non-Ignition Switch Pre-Closing Accident Plaintiffs have not yet demonstrated a due process violation, many of these plaintiffs have alleged that their claims arise out of defects that are substantially similar to the Ignition Switch Defect—defects that involve the same condition (low torque switches that move out of the “run” position) and have the same effects (loss of power to steering, brakes, and airbags). The Non-Ignition Switch Plaintiffs and Non-Ignition Switch Pre-Closing Accident Plaintiffs have also argued that they can demonstrate a violation of their due process rights in connection with the Bar Date.

72. Further, the Plaintiffs have argued, and the GUC Trust disputes, that excusable neglect can exist in the absence of a due process violation. For example, Plaintiffs have asserted that excusable neglect can be found where the debtors failed to comply with bankruptcy procedures in providing notice of a bar date and where a claimant, through no fault of its own, was unaware of its claim prior to the bar date. See In re Arts de Provinces de France, Inc., 153 B.R. 144, 147 (Bankr. S.D.N.Y. 1993); In re PT-1 Commc’ns, Inc., 292 B.R. 482, 489 (Bankr. E.D.N.Y. 2003). This issue, too, would have to be litigated.

73. Another complex issue is whether the doctrine of equitable mootness is applicable to bar Plaintiffs’ claims. See In re Chateaugay Corp., 10 F.3d 944, 952-53 (2d Cir. 1993).

74. In the April 2015 Decision, the Bankruptcy Court applied the five Chateaugay factors<sup>30</sup> and determined that if the Ignition Switch Plaintiffs’ or Ignition Switch Pre-Closing

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<sup>30</sup> These five factors are: (i) the court can still order some effective relief; (ii) such relief will not affect “the re-emergence of the debtor as a revitalized corporate entity”; (iii) such relief will not unravel intricate transactions so as to “knock the props out from under the authorization for every transaction that has taken place” and “create an unmanageable, uncontrollable situation for the Bankruptcy Court”; (iv) the “parties who would be adversely



Accident Plaintiffs' late claims were allowed, GUC Trust Assets could not be tapped to pay them under the doctrine of equitable mootness. See In re Motors Liquidation Co., 529 B.R. at 598. The Bankruptcy Court found, *inter alia*, that any relief would "knock the props out" from the transactions in which Unitholders acquired their units. See id. at 587-88, 592. Allowing billions of dollars in additional claims against the GUC Trust, in Judge Gerber's view, would be "extraordinarily unjust" given the Unitholders' expectation that the universe of claims against the GUC Trust would decrease, and not increase, over time following the Bar Date. Id. at 88. The Bankruptcy Court's determination was also based, in part, on its acknowledgment that purchasers of GUC Trust units could not foresee that future distributions would be delayed while additional claims were filed and litigated. Id. at 88-89.

75. On appeal, the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs argued that the Bankruptcy Court erred because, *inter alia*, effective relief could be fashioned without disturbing any transactions or having an adverse impact on Unitholders by providing Plaintiffs with exclusive access to any Adjustment Shares that may be issued under the AMSPA.<sup>31</sup> These Plaintiffs argued that where any relief, including partial relief, is available, equitable mootness should not be applied. See, e.g., Chateaugay, 10 F.3d at 954. In addition, they argued that equitable mootness was only applicable in the context of bankruptcy appeals.<sup>32</sup>

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affected by the modification have notice of the appeal and an opportunity to participate in the proceedings;" and (v) the appellant "pursue[d] with diligence all available remedies to obtain a stay of execution of the objectionable order . . . if the failure to do so creates a situation rendering it inequitable to reverse the orders appealed from." In re Chateaugay Corp., 10 F.3d at 952-53.

<sup>31</sup> See Br. for Appellant Ignition Switch Plaintiffs, Elliott v. General Motors LLC (In re Motors Liquidation Co.), Appeal Nos. 15-2844(L), 15-2847(XAP), 15-2848(XAP) (2d Cir. Nov. 16, 2015) [ECF No. 235], 49-52; Br. for Ignition Switch Pre-Closing Accident Plaintiffs, Elliott v. General Motors LLC (In re Motors Liquidation Co.), Appeal Nos. 15-2844(L), 15-2847(XAP), 15-2848(XAP) (2d Cir. Nov. 16, 2015) [ECF No. 183], 4, 52 n.18 (incorporating the arguments on the application of equitable mootness in the Ignition Switch Plaintiffs' brief).

<sup>32</sup> See Response and Reply Br. for Appellant-Cross-Appellee Ignition Switch Plaintiffs, Elliott v. General Motors LLC (In re Motors Liquidation Co.), Appeal Nos. 15-2844(L), 15-2847(XAP), 15-2848(XAP) (2d Cir. Feb. 1, 2016) [ECF No. 315], at 40-43.

76. The Second Circuit vacated the Bankruptcy Court's equitable mootness ruling as advisory, neither affirming nor reversing that decision.

77. Additional complex issues would certainly arise from continued litigation of Plaintiffs' claims. The Bankruptcy Court would need to decide whether class certification for the economic loss Plaintiffs' proposed class proofs of claims would be appropriate. In addition, the GUC Trust could raise objections to allowance of these class claims, as well as to the separate proofs of claim filed by Ignition Switch Pre-Closing Accident Plaintiffs. This could lead to the need to resolve issues under the varied laws of the fifty states and the District of Columbia.

78. In sum, while the GUC Trust believes that it has meritorious defenses to the claims of all Plaintiffs, the resolution of the numerous, complex issues raised by the litigation over Plaintiffs' claims is uncertain, and, as set forth below, would result in significant expense and delay.

**2. The Terms of the Settlement Agreement  
Outweigh the Risks of Continued Litigation.**

79. Litigation of these complex issues has been ongoing for years, consuming large sums of money and countless hours of labor for the Parties and this Court. In the absence of settlement, there is a high likelihood of even more expensive, protracted and contentious litigation that will consume significant estate funds and expose the estate to risk and uncertainty. In addition, resolution of these issues may require the added time and expense of discovery. For example, the Pioneer analysis is fact intensive and, to date, only limited discovery, restricted to a proposed class representative of the Ignition Switch Plaintiffs and certain Ignition Switch Pre-Closing Accident Plaintiffs, has occurred on this issue.

80. By comparison, settling the litigation provides the Parties with greater certainty and eliminates the significant cost and delay of litigation. In addition, the Settlement Agreement provides several benefits beyond avoiding continued litigation.

81. First, the Parties' determination to seek a Claims Estimate Order allowing and estimating Plaintiffs' claims in an amount, when combined with all of the other Allowed General Unsecured Claims against the Old GM estate, that may equal or exceed \$42 billion, provides an efficient and reasonable resolution of the allowable amount of Plaintiffs' claims.

82. Under the Settlement, any Adjustment Shares issued by New GM under this Claims Estimate Order would be for the exclusive benefit of Plaintiffs. Based on the amount of allowed and disputed unsecured claims against Old GM, New GM's obligation to issue these shares would not be triggered absent allowance of Plaintiffs' claims.<sup>33</sup> Thus, the GUC Trust determined that it was reasonable to forgo any potential future recovery from the Adjustment Shares in consideration for the Release. This provision potentially paves the way for Plaintiffs to obtain a recovery on their claims without disturbing other creditors' past or future recoveries.

83. Further, the Settlement removes a major impediment to winding down the Old GM estate. The resolution of Plaintiffs' claims and waiver of certain rights and claims eliminates the likelihood of complex and protracted litigation, including with respect to Plaintiffs' attempts to enjoin further GUC Trust distributions, thus preventing delay in distributing remaining GUC Trust Assets and protects Unitholders from the risk of claw-back or recapture of prior distributions.

84. Finally, given that nearly all the GUC Trust's funds have been distributed or reserved for the Bankruptcy Code section 502(h) claim emanating from the Avoidance Action

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<sup>33</sup> See *Motors Liquidation Company GUC Trust Quarterly Section 6.2(c) Report and Budget Variance Report as of March 30, 2018*, dated Apr. 30, 2018 [ECF No. 14290].

Litigation, it is likely that the GUC Trust would run out of funds prior to completing the litigation of these claims.

85. The terms of the Settlement Agreement reflect a reasonable assessment of the substantial time and expense of litigating Plaintiffs' claims, balanced against the benefits of more near-term, efficient and certain resolution of the allowable amount of Plaintiffs' claims and sources of recovery. The benefits of the Settlement in the near term outweigh the benefit of potential long-term success through the protracted litigation of complex issues.

**B. The Settlement Agreement Is Beneficial to Creditors and Supported by Interested Parties.**

86. With respect to the third and fourth Iridium factors—the paramount interests of creditors and whether other interested parties support the settlement—prolonging the litigation will increase costs and decrease the amount of GUC Trust Assets available to satisfy creditors. Approving the Settlement Agreement, on the other hand, avoids the significant expense and uncertainty associated with continued litigation, and maximizes and expedites distributions to current GUC Trust beneficiaries. The release of Plaintiffs' rights and claims with respect to the GUC Trust's prior distributions and current GUC Trust Assets allows the GUC Trust to complete the orderly wind-down of the Old GM estate.

87. Moreover, providing Plaintiffs with the exclusive right to proceed against a settlement fund containing the Settlement Amount and the Adjustment Shares potentially opens an avenue for Plaintiffs to recover on their claims against the GUC Trust without disturbing recovery expectations of other creditors or Unitholders. Plaintiffs' rights concerning the Adjustment Shares are protected because notice of any agreement by the Signatory Plaintiffs on proposed criteria to assert a claim against the Settlement Fund and a proposed methodology of

allocation of the Settlement Fund between economic loss claims and personal injury/wrongful death claims will be provided to Plaintiffs, who will be given an opportunity to object.

88. Not surprisingly, the key interested parties—the GUC Trust (who has sole authority under the Late Filed Claims Order to consent to late filed claims and is the only party under the Plan provided with standing to object to the allowance of claims), Signatory Plaintiffs and the Participating Unitholders—all support the Settlement Agreement. Accordingly, for all of the reasons set forth above, the Settlement easily meets the Iridium factors and allows the GUC Trust to implement the express purpose of the GUC Trust Agreement. GUC Trust Agreement § 2.2 (stating that the “sole purpose of the GUC Trust is to implement the Plan on behalf of, and for the benefit of the GUC Trust Beneficiaries”); GUC Trust Agreement § 4.2 (stating that “in no event shall the GUC Trust Administrator unduly prolong the duration of the GUC Trust, and the GUC Trust Administrator shall, in the exercise of its reasonable business judgment and in the interests of all GUC Trust Beneficiaries, at all times endeavor to terminate the GUC Trust as soon as practicable in accordance with the purposes and provisions of this Trust Agreement and the Plan.”).

**C. The Settlement Agreement Satisfies the Remaining *Iridium* Factors.**

89. With respect to the sixth factor, “the nature and breadth of releases to be obtained by officers and directors,” in exchange for the payment of \$15 million, the Settlement Agreement releases any and all rights, claims and causes of action that any Plaintiff may assert against the GUC Trust, the GUC Trust Administrator, the GUC Trust Assets, the Avoidance Action Trust and Unitholders. Importantly, the notice procedures set forth in the Notice Procedures Motion contemplate a comprehensive individualized mailing program whereby Plaintiffs receive a concise summary of the Settlement Agreement and instructions for accessing a website dedicated

specifically to the Settlement. Each recipient, therefore, will have the opportunity and right to be heard by the Court in connection with the Settlement.

90. With respect to the fifth and seventh Iridium factors, competent and experienced counsel to the Parties who have been litigating these issues for years actively engaged in arms'-length, good faith negotiations to formulate the Settlement Agreement. The Parties, having considered the uncertainties, delay and cost that would be incurred by further litigation, submit that the Settlement Agreement is fair, reasonable and appropriate, and in the best interests of the Parties.

91. Based on the foregoing, the Settlement Agreement is in the best interests of the estate and its creditors and falls well within the range of reasonableness. Therefore, entry into and approval of the Settlement Agreement pursuant to Bankruptcy Rule 9019 is warranted and the Settlement Agreement should be approved.<sup>34</sup>

### NOTICE

92. Notice of this Motion has been provided in accordance with the Court-approved notice procedures. See Sixth Amended Order Pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rules 1015(c) and 9007 Establishing Notice and Case Management Procedures, dated May 5, 2011 [ECF No. 10183]. Notice of this Motion has also been provided to any other required notice parties under Section 6.1(b)(iv) of the GUC Trust Agreement. The Parties submit that no other or further notice need be provided.

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<sup>34</sup> In the event that the Settlement Agreement is not approved by the Court or the Settlement Agreement does not become binding and enforceable for any reason, the Parties reserve all their rights and nothing herein shall be deemed or construed as an admission of any fact, liability, stipulation, or waiver, but rather as a statement made in furtherance of settlement discussions.

**NO PRIOR REQUEST**

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

**CONCLUSION**

WHEREFORE, the Parties respectfully request that the Court: (i) enter an order substantially in the form attached hereto as **Exhibit B** approving the actions to be undertaken by the GUC Trust Administrator under the terms of the Settlement and approving the Settlement Agreement, attached hereto as **Exhibit A**, pursuant to Bankruptcy Rule 9019; (ii) authorize the reallocation of \$15 million of GUC Trust Assets; and (iii) grant such other relief as is just and equitable.

*[Remainder of the page intentionally left blank]*

Dated: New York, New York  
May 3, 2018

Respectfully submitted,

By: /s/ Kristin K. Going  
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*Attorneys for the Motors Liquidation  
Company GUC Trust Administrator*



# **EXHIBIT A**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”), dated as of April 25, 2018 among:

Wilmington Trust Company, (the “GUC Trust Administrator”) solely in its capacity as trustee for and administrator of the Motors Liquidation Company General Unsecured Creditors Trust (and as defined in Section 1.22 herein, the “GUC Trust”)

-and-

The Signatory Plaintiffs, as hereinafter defined (the Signatory Plaintiffs and the GUC Trust, the “Parties”).

### PREAMBLE<sup>1</sup>

#### Background: The Old GM Bankruptcy.

A. Beginning on the Petition Date, Motors Liquidation Company f/k/a General Motors Corporation, a Delaware Corporation (“Old GM”), and certain of its affiliated companies (together with Old GM, the “Debtors”) commenced the Old GM Bankruptcy Case under chapter 11 of the Bankruptcy Code;

B. Also on the Petition Date, the Sellers entered into an agreement pursuant to which certain assets of the Sellers, including the brand “General Motors,” were to be sold to NGMCO, Inc., n/k/a General Motors LLC, a Delaware corporation (“New GM”);

C. As of July 5, 2009, the AMSPA was further and finally amended pursuant to a Second Amendment to the Amended and Restated Master Sale Purchase Agreement to, among other things, modify provisions in the original sale agreement relating to the issuance by New GM of a purchase price adjustment consisting of shares (the “Adjustment Shares”) of New GM Common Stock in respect of Allowed General Unsecured Claims;

D. Pursuant to the AMSPA, if the Bankruptcy Court issues an order estimating the aggregate allowed General Unsecured Claims against the Sellers at an amount exceeding thirty-five billion dollars (\$35,000,000,000), then New GM must, within five (5) business days of entry of such order, issue the Adjustment Shares;

E. If the Bankruptcy Court issues an Estimation Order estimating the aggregate allowed General Unsecured Claims against the Sellers at an amount at or exceeding forty-two billion dollars (\$42,000,000,000), New GM must issue the maximum amount of Adjustment Shares (30,000,000 shares);

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<sup>1</sup> Capitalized terms used, but not otherwise defined in the Preamble shall have the meanings ascribed to such terms in the Definitions section of this Agreement.

F. On July 5, 2009, the AMSPA was approved pursuant to a Bankruptcy Code section 363 order (the “**Sale Order**”);

G. Pursuant to the Sale Order, New GM became vested in substantially all of the material assets of the Sellers;

H. On July 10, 2009 (the “**Closing Date**”), the 363 Sale was consummated;

I. On September 16, 2009, the Bar Date Order was entered establishing November 30, 2009 (the “**Bar Date**”) as the deadline to file proofs of claim against the Debtors;

J. On March 29, 2011, the Bankruptcy Court issued an order (the “**Confirmation Order**”) confirming the Plan;

K. The Plan created the GUC Trust pursuant to the GUC Trust Agreement, as a post-confirmation successor to the Debtors pursuant to Section 1145 of the Bankruptcy Code, to, *inter alia*, administer the GUC Trust Assets;

L. The Plan, GUC Trust Agreement, MSPA and Side Letter provided the GUC Trust with the sole, exclusive right to object to and settle General Unsecured Claims, pursue an Estimation Order, and request and receive the Adjustment Shares;

M. On March 31, 2011 (the “**Effective Date**”), the Plan was declared effective;

N. As of December 31, 2017, the total allowed General Unsecured Claims are \$31,855,431,837;

#### **The Recalls and the Multi-District Litigation.**

O. In or around February and March of 2014, New GM issued a recall, NHTSA Recall Number 14V-047, pertaining to 2,191,525 vehicles with an ignition switch defect (the “**Ignition Switch Defect**”);

P. In or around June, July and September of 2014, New GM issued four additional recalls pertaining to approximately 10 million vehicles with defective ignition switches, NHTSA Recall Numbers 14V-355, 14V-394, 14V-540 and 14V-400;

Q. In or around March of 2014, New GM issued a recall, NHTSA Recall Number 14V-118, pertaining to approximately 1.2 million vehicles with defective side airbags;

R. In or around March of 2014, New GM issued a recall, NHTSA Recall Number 14V-153, pertaining to over 1.3 million vehicles with defective power steering;

S. Commencing after the issuance of the recalls, numerous lawsuits were filed against New GM, individually or on behalf of putative classes of persons, by, *inter alia*:

- a. plaintiffs asserting economic loss claims who, prior to the Closing Date, owned or leased a vehicle with an ignition switch defect included in Recall No. 14V-047 (the “**Ignition Switch Plaintiffs**”);
- b. plaintiffs asserting economic loss claims who, prior to the Closing Date, owned or leased a vehicle with defects in ignition switches, side airbags, or power steering included in NHTSA Recall Nos. 14V-355, 14V-394, 14V-400, 14V-118 and 14V-153 (the “**Non-Ignition Switch Plaintiffs**”); and
- c. plaintiffs asserting personal injury or wrongful death claims based on or arising from an accident that occurred before the Closing Date involving an Old GM vehicle that was later subject to NHTSA Recall Nos. 14V-047, 14V-355, 14V-540, 14V-394 and 14V-400 (the “**Pre-Closing Accident Plaintiffs**”), including a subset asserting claims involving an Old GM vehicle with the Ignition Switch Defect (the “**Ignition Switch Pre-Closing Accident Plaintiffs**”);

T. Many of the cases commenced against New GM were consolidated in a multi-district litigation (the “**GM MDL**”) pending in the United States District Court for the Southern District of New York before the Hon. Jesse M. Furman (the “**District Court**”);

#### **The Motions to Enforce Litigation.**

U. In or around April and August of 2014, New GM sought to enjoin such lawsuits against New GM by filing motions to enforce the Sale Order with respect to: (i) Ignition Switch Plaintiffs; (ii) Ignition Switch Pre-Closing Accident Plaintiffs; and (iii) Non-Ignition Switch Plaintiffs (the “**Motions to Enforce**”);

V. Following the filing of the Motions to Enforce, the Bankruptcy Court identified initial issues to be addressed on the Motions to Enforce with respect to the Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs;

W. Following briefing and argument, the Bankruptcy Court issued the Decision on April 15, 2015, and the Judgment implementing the Decision on June 1, 2015;

X. In the Decision and the Judgment, the Bankruptcy Court ruled that “based on the doctrine of equitable mootness, in no event shall assets of the GUC Trust held at any time in the past, now or in the future (collectively, the ‘GUC Trust Assets’) (as defined in the Plan) be used to satisfy any claims of the Plaintiffs”;

Y. On July 13, 2016, the Second Circuit issued an opinion on direct appeal of the Decision and Judgment, vacating the Bankruptcy Court’s equitable mootness ruling as an advisory opinion and further determining that (i) there was no clear error in the Bankruptcy Court’s factual finding that Old GM knew or reasonably should have known about the ignition switch defect prior to bankruptcy, (ii) Old GM should have provided direct mail notice to vehicle owners, and (iii) individuals with claims arising out of the ignition switch defect were entitled to notice by direct mail or some equivalent, as required by procedural due process;

Z. Following the issuance of the Second Circuit's mandate, the Bankruptcy Court identified initial issues to be addressed on remand, including whether the Pre-Closing Accident Plaintiffs, the Ignition Switch Plaintiffs and/or the Non-Ignition Switch Plaintiffs satisfy the requirements for authorization to file late proof(s) of claim against the GUC Trust and/or whether such claims are equitably moot;

AA. Pursuant to the Order to Show Cause, on December 22, 2016, the Ignition Switch Plaintiffs, certain Non-Ignition Switch Plaintiffs and certain Pre-Closing Accident Plaintiffs who had not received notice of the Order to Show Cause, filed motions for authority to file late proofs of claim, including late class proofs of claim and, on July 28, 2017, certain Pre-Closing Accident Plaintiffs filed a motion for authority to file late proofs of claim, as supplemented on September 19, 2017 and December 12, 2017 (the "**Late Claims Motions**");

BB. On or around February 16, 2017, counsel for the GUC Trust served counsel for the Ignition Switch Plaintiffs and counsel for certain Ignition Switch Pre-Closing Accident Plaintiffs with interrogatories (the "**Late Claims Interrogatories**") in connection with the Late Claims Motions;

CC. An Ignition Switch Plaintiff and certain Ignition Switch Pre-Closing Accident Plaintiffs have responded to the Late Claims Interrogatories;

DD. In or around March 2017, additional briefs were filed by Ignition Switch Plaintiffs, certain Ignition Switch Pre-Closing Accident Plaintiffs, New GM, and jointly by the GUC Trust and the Participating Unitholders on the Applicability of the *Pioneer* Issue and the Tolling Issue (as those terms are defined in the *Order Establishing, Inter Alia, Briefing Schedule for Certain Issues Arising From Late Claim Motions Filed by Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs and Certain Ignition Switch Pre-Closing Accident Plaintiffs* [ECF No. 13869]);

EE. On July 15, 2016 and June 30, 2017, Judge Furman issued opinions in the GM MDL explaining that the "benefit-of-the-bargain defect theory" of economic loss damages "compensates a plaintiff for the fact that he or she overpaid, at the time of sale, for a defective vehicle. That form of injury has been recognized by many jurisdictions." See In re Gen. Motors LLC Ignition Switch Litig., 14-MD-2543 (JMF) (S.D.N.Y. June 30, 2017) [ECF Nos. 3119, 4175]. On April 3, 2018, Judge Furman denied without prejudice, New GM's motion for summary judgment with respect to Plaintiffs' claims for "benefit-of-the-bargain" damages [ECF No. 5310].

FF. On April 24, 2018, the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs filed amended Proofs of Claim in connection with the Late Claims Motions;

GG. On or about April 20, 2018, PIWD Counsel advised the GUC Trust that it would be filing a supplement to its pending Late Claims Motion to add a request to file late proofs of claim on behalf of existing clients of PIWD Counsel that are persons injured or killed in accidents that occurred prior to the Closing Date involving an Old GM vehicle that was subject to Recall Nos. 14V-355, 14V-394, or 14V-400, that would contend, among other things, a due process violation regarding the Bar Date that was substantially similar to the due process

violations that were adjudicated by the Bankruptcy Court with respect to Recall No. 14V-047 (the “**Supplemental Late Claims Motion**”).

HH. Counsel for the proposed class representatives for the Ignition Switch Plaintiffs, the proposed class representatives for certain Non-Ignition Switch Plaintiffs and certain Pre-Closing Accident Plaintiffs have provided counsel for the GUC Trust with expert reports and proffers of evidence indicating that the amount of damages for the Ignition Switch Plaintiffs’, certain Non-Ignition Switch Plaintiffs’, and certain Pre-Closing Accident Plaintiffs’ asserted claims, if ultimately determined to be allowed General Unsecured Claims against Old GM and/or the GUC Trust, would be greater than that amount necessary to trigger New GM’s obligation to issue the Adjustment Shares in the maximum amount under the AMSPA;

II. The Signatory Plaintiffs, on the one hand, and the GUC Trust, on the other hand, disagree regarding whether the proponents of the Late Claims Motions and the Supplemental Late Claims Motion satisfy the requirements for authorization to file late claims and late class proof(s) of claim against the GUC Trust, and whether such asserted claims are equitably moot or barred by the doctrine of laches;

JJ. The Signatory Plaintiffs, on the one hand, and the GUC Trust, on the other hand, disagree regarding whether any GUC Trust Assets currently in the GUC Trust could be used to satisfy Plaintiffs’ asserted claims against the GUC Trust and Old GM;

KK. The Signatory Plaintiffs, on the one hand, and the GUC Trust, on the other hand, disagree regarding whether the Signatory Plaintiffs are beneficiaries of the GUC Trust;

LL. The Signatory Plaintiffs, on the one hand, and the GUC Trust, on the other hand, disagree regarding whether any GUC Trust Assets previously distributed are subject to claw-back or recapture by the GUC Trust and/or the Plaintiffs to satisfy Plaintiffs’ asserted claims against the GUC Trust and Old GM;

MM. The GUC Trust desires to complete the distribution of the GUC Trust Assets held by the GUC Trust as soon as practicable and, to such purpose, desires to resolve the Late Claims Motions, the Supplemental Late Claims Motion and the Plaintiffs’ asserted claims against the GUC Trust and Old GM;

NN. The GUC Trust acknowledges the key objectives of the Signatory Plaintiffs in entering into this Agreement are to (i) achieve the funding of the Settlement Fund; (ii) avoid the risk, delay, uncertainty and costs of litigation with the GUC Trust; and (iii) seek the issuance of the maximum amount of Adjustment Shares and to make the value of the Settlement Fund and the Adjustment Shares available to satisfy, in part, the Plaintiffs’ claims. In connection with those objectives, the Signatory Plaintiffs have provided to the GUC Trust the expert report and proffer of evidence for the Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs, and the expert report and proffer of evidence provided by certain Pre-Closing Accident Plaintiffs;

OO. The Signatory Plaintiffs acknowledge the key objectives of the GUC Trust in entering into this Agreement are: (i) to minimize any delay or risk to the distribution of any remaining GUC Trust Assets to GUC Trust Beneficiaries; (ii) avoid any claw-back or recapture

of prior distributions of GUC Trust Assets; and (iii) otherwise avoid the risk, delay, uncertainty and costs of litigation over the myriad issues that remain outstanding;

PP. Based upon the complexity of the issues in dispute, including, but not limited to the remaining 2016 Threshold Issues (the “**Disputed Issues**”), the potential for extensive, time consuming and expensive litigation regarding the Disputed Issues, the inherent uncertainty that would be attendant to litigating them, and the impact that an adverse judgment would have on the GUC Trust, coupled with the desire to resolve the final potential claims against the GUC Trust, address any due process violations and attendant issues relating to the Recalls issued after the Plan Effective Date, and after review of the expert reports and proffer of evidence from the Ignition Switch Plaintiffs, Non-Ignition Switch Plaintiffs, and Pre-Closing Accident Plaintiffs, as well as expert reports and other materials from New GM, the GUC Trust agrees, as part of the settlement of the Disputed Issues, to seek the issuance of the Estimation Order as provided for pursuant to Section 3.2(c) of the AMSPA, Section 7.3 of the Plan, the Side Letter and Section 5.1 of the GUC Trust Agreement.

## **AGREEMENT**

In settlement of the Disputed Issues between the GUC Trust and the Plaintiffs, the Parties agree to the following:

**1. DEFINITIONS.** The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

**1.1 Adjustment Shares** shall have the meaning ascribed to such term in the Preamble. Solely in the event that the Bankruptcy Court enters the Estimation Order, the term “Adjustment Shares” as used herein shall be deemed to exclude any amounts due and payable on account of taxes or withholding.

**1.2 Adjustment Shares Waiver Provision** shall have the meaning ascribed to such term in Section 2.4 hereto.

**1.3 AMPSA** means that certain Amended and Restated Master Sale and Purchase Agreement, by and among General Motors Corporation and its debtor subsidiaries, as Sellers, and NGMCO, Inc., as successor in interest to Vehicle Acquisition Holdings LLC, a purchaser sponsored by the U.S. Treasury, as Purchaser, dated as of June 26, 2009, together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto, as amended, restated, modified, or supplemented from time to time.

**1.4 Bar Date Order** means that *Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Proofs of Claim (Including Claims Under Bankruptcy Code Section 503(B)(9)) and Procedures Relating Thereto and Approving the Form and Manner of Notice Thereof*, dated Sept. 16, 2009 [ECF No. 4079] entered by the Bankruptcy Court establishing the Bar Date.

**1.5 Bar Date** shall have the meaning ascribed to such term in the Preamble.

**1.6 Bankruptcy Code** means title 11 of the United States Code.

**1.7 Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of New York.

**1.8 Closing Date** shall have the meaning ascribed to such term in the Preamble.

**1.9 Co-Lead Counsel** means, for purposes of this Agreement, Steve W. Berman of Hagens Berman Sobol Shapiro LLP and Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP, who were individually and collectively appointed to represent all economic loss plaintiffs in the GM MDL by Order No. 8, In re Gen. Motors LLC Ignition Switch Litig., No. 14-MD-2543 (S.D.N.Y. Aug. 15, 2014) [ECF No. 249], or any other or replacement counsel appointed to represent any Ignition Switch or Non-Ignition Switch Plaintiffs in the GM MDL.

**1.10 Communication** shall have the meaning ascribed to such term in Section 3.15.

**1.11 Confirmation Order** shall have the meaning ascribed to such term in the Preamble.

**1.12 Debtors** shall have the meaning ascribed to such term in the Preamble.

**1.13 Decision** means the *Decision on Motion to Enforce Sale Order*, entered April 15, 2015 [ECF No. 13109] by Judge Robert E. Gerber in the Bankruptcy Court, published as In re Motors Liquidation Company, 529 B.R. 510 (Bankr. S.D.N.Y. 2015), as corrected in *Errata Order RE: Decision on Motion to Enforce Sale Order, In re Motors Liquidation Co.*, No. 09-50026, dated July 13, 2015 [ECF No. 13290].

**1.14 Disputed Issues** shall have the meaning ascribed to such term in the Preamble.

**1.15 District Court** shall have the meaning ascribed to such term in the Preamble.

**1.16 Effective Date** shall have the meaning ascribed to such term in the Preamble.

**1.17 Estimation Motion** shall mean a motion filed in the Bankruptcy Court by the GUC Trust seeking a determination of Plaintiffs' aggregate Allowed General Unsecured Claims against the Sellers.

**1.18 Estimation Order** shall mean an order of the Bankruptcy Court estimating Plaintiffs' aggregate Allowed General Unsecured Claims against the Sellers, as contemplated by Section 3.2(c) of the AMSPA, substantially in the form to be agreed upon by the Parties.

**1.19 Final Order** shall have the meaning ascribed to such term in the Plan.

**1.20 General Unsecured Claim** shall have the meaning ascribed to such term in the Plan.

**1.21 GM MDL** shall have the meaning ascribed to such term in the Preamble.



**1.22 GUC Trust** means the trust created by the GUC Trust Agreement in the form approved as Exhibit D to the Plan, as the same has been and may further be amended from time to time.

**1.23 GUC Trust Agreement** means the *Second Amended and Restated Motors Liquidation Company GUC Trust Agreement*, by and among Wilmington Trust Company, as trust administrator and trustee of the GUC Trust, and FTI Consulting, as trust monitor of the GUC Trust, dated July 30, 2015, as it may be amended from time to time.

**1.24 GUC Trust Assets** means assets that have been held, are held, or may be held in the future by the GUC Trust. Solely in the event that the Bankruptcy Court enters the Estimation Order, the term “GUC Trust Assets” as used herein shall be deemed to exclude the Adjustment Shares.

**1.25 GUC Trust Beneficiaries** means, in accordance with Section F of the GUC Trust Agreement, holders of allowed General Unsecured Claims as of the date of this Agreement, and, for the avoidance of doubt, does not include Plaintiffs.

**1.26 GUC Waiver Provision** shall have the meaning ascribed to such term in Section 2.4 hereto.

**1.27 Ignition Switch Defect** shall have the meaning ascribed to such term in the Preamble.

**1.28 Ignition Switch Plaintiffs** shall have the meaning ascribed to such term in the Preamble.

**1.29 Ignition Switch Pre-Closing Accident Plaintiffs** shall have the meaning ascribed to such term in the Preamble.

**1.30 Judgment** means the Judgment, entered June 1, 2015 [ECF No. 13177] by Judge Robert E. Gerber in the Old GM Bankruptcy Case.

**1.31 Key Objectives** means the objectives of the Parties in entering into this Agreement as stated in Paragraphs NN and OO of the Preamble.

**1.32 Late Claims Interrogatories** shall mean the interrogatories that counsel for the GUC Trust served counsel for the Ignition Switch Plaintiffs and counsel for certain Ignition Switch Pre-Closing Accident Plaintiffs on or around February 16, 2017 in connection with the Late Claims Motions.

**1.33 Late Claims Motions** shall have the meaning ascribed to such term in the Preamble.

**1.34 Motors Liquidation Company Avoidance Action Trust** means the trust established under the Plan in connection with recovery of proceeds of the Term Loan Avoidance Action.

**1.35 Motions to Enforce** means, collectively, the (i) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction*, dated April 21, 2014 [ECF No. 12620]; (ii) *Motion of General Motors LLC Pursuant to 11 U.S.C §§ 105 and 363 to Enforce this Court's July 5, 2009 Sale Order and Injunction Against Plaintiffs in Pre-Closing Accident Lawsuits*, dated August 1, 2014 [ECF No. 12807]; and (iii) *Motion of General Motors LLC Pursuant to 11 U.S.C. §§ 105 and 363 to Enforce the Court's July 5, 2009 Sale Order and Injunction (Monetary Relief Actions, Other Than Ignition Switch Actions)*, dated August 1, 2014 [ECF No. 12808].

**1.36 New GM** shall have the meaning ascribed to such term in the Preamble.

**1.37 New GM Common Stock** means the common stock of New GM (NYSE: GM).

**1.38 NHTSA** means the National Highway Traffic Safety Administration.

**1.39 Non-Ignition Switch Plaintiffs** shall have the meaning ascribed to such term in the Preamble.

**1.40 Notice Cost Cap Amount** shall have the meaning ascribed to such term in Section 2.3.

**1.41 Notice Order** shall have the meaning ascribed to such term in Section 2.3.

**1.42 Old GM** shall have the meaning ascribed to such term in the Preamble.

**1.43 Old GM Bankruptcy Case** means those proceedings commenced on June 1, 2009 in the Bankruptcy Court captioned *In re Motors Liquidation Company, et al., f/k/a General Motors Corp.*, Bankr. No. 09-50026.

**1.44 Order to Show Cause** means the order entered by the Bankruptcy Court on December 13, 2016, which identified five threshold issues.

**1.45 Outside Date** shall have the meaning ascribed to such term in Section 3.2.

**1.46 Participating Unitholders** means certain unaffiliated holders of 67% of the beneficial units of the GUC Trust, as of the date of this Agreement, represented by Akin Gump Strauss Hauer & Feld LLP.

**1.47 Parties** means the Signatory Plaintiffs and the GUC Trust.

**1.48 Petition Date** means June 1, 2009, when Motors Liquidation Company, f/k/a General Motors Corporation, a Delaware Corporation, and certain of its affiliated companies commenced cases under chapter 11 of the Bankruptcy Code.

**1.49 PIWD** means claims for personal injury and wrongful death.

**1.50 PIWD Counsel** means (i) Robert C. Hilliard of Hilliard Martinez Gonzales, LLP and Thomas J. Henry of the Law Offices of Thomas J. Henry, but solely for the Pre-Closing

Accident Plaintiffs represented by those two law firms with respect to a Late Claims Motion and a Supplemental Late Claims Motion; and (ii) Lisa M. Norman of Andrews Myers, P.C., but solely for the Pre-Closing Accident Plaintiffs represented by that law firm with respect to a Late Claims Motion.

**1.51 PIWD Plaintiffs** means those certain Ignition Switch Pre-Closing Accident Plaintiffs represented by PIWD Counsel with respect to a Late Claims Motion or a Supplemental Late Claims Motion.

**1.52 Plaintiffs** means the Ignition Switch Plaintiffs, the Non-Ignition Switch Plaintiffs, and the Pre-Closing Accident Plaintiffs, including all plaintiffs (whether named or unnamed, including unnamed members of a putative class) covered by any of the Late Claims Motions, all plaintiffs represented by counsel that is signatory hereto and any other party who (i) prior to July 10, 2009, suffered an economic loss claim by reason of his, her or its ownership or lease of an Old GM vehicle with an Ignition Switch Defect included in Recall No. 14V-047; (ii) prior to July 10, 2009 suffered an economic loss claim by reason of their ownership or lease of an Old GM vehicle with defects in ignition switches, side airbags, or power steering included in NHTSA Recall Nos. 14V-355, 14V-394, 14V-400, 14V-118 or 14V-153, and/or (iii) suffered a personal injury or wrongful death based on or arising from an accident that occurred prior to the Closing Date that involved an Old GM vehicle that was later subject to NHTSA Recall Nos. 14V-047, 14V-355, 14V-394, or 14V-400, it being understood however that the covenants and agreements to be performed by the Signatory Plaintiffs are to be performed by Co-Lead Counsel and PIWD Counsel and that no action or failure to act by any Plaintiff (other than the Signatory Plaintiffs) shall constitute a breach of this Agreement or shall excuse the performance of any other Party.

**1.53 Plan** means the Debtors' Second Amended Joint Chapter 11 Plan, filed March 18, 2011 [ECF No. 9836] by Motors Liquidation Company in the Old GM Bankruptcy Case.

**1.54 Pre-Closing** means any time before July 10, 2009, the date on which the 363 Sale between the Sellers and New GM closed.

**1.55 Pre-Closing Accident Plaintiffs** shall have the meaning ascribed to such term in the Preamble.

**1.56 Proofs of Claim** means the late proofs of claim, including late class proofs of claim, that the Ignition Switch Plaintiffs, certain Non-Ignition Switch Plaintiffs and certain Pre-Closing Accident Plaintiffs sought authority to file pursuant to the Late Claims Motions and the Supplemental Late Claims Motion, and any amendments thereto filed prior to the execution of this Agreement.

**1.57 Recalls** means NHTSA Recall Numbers 14V-047, 14V-355, 14V-394, 14V-540, 14V-400, 14V-118 and 14V-153.

**1.58 Sale Order** means the *Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief*, dated July 5, 2009 [ECF No. 2968] and the supporting *Decision on Debtors' Motion for Approval of (I) Sale of Assets to Vehicle Acquisition Holdings*,

LLC; (2) Assumption and Assignment of Related Executory Contracts; and (3) Entry into UAW Retiree Settlement Agreement, dated July 5, 2009 [ECF No. 2967].

**1.59 Sellers** means Motors Liquidation Company, formerly known as General Motors Corporation, together with three of its debtor subsidiaries, Chevrolet-Saturn of Harlem, Inc.; Saturn, LLC; and Saturn Distribution Corporation.

**1.60 Settlement** means the settlement of the Parties' disputes as provided for by this Agreement.

**1.61 Settlement Amount** shall have the meaning ascribed to such term in Section 2.4.

**1.62 Settlement Effective Date** shall have the meaning ascribed to such term in Section 3.1.

**1.63 Settlement Fund** shall have the meaning ascribed to such term in Section 2.4.

**1.64 Settlement Motion** shall have the meaning ascribed to such term in Section 2.2.

**1.65 Settlement Order** shall have the meaning ascribed to such term in Section 2.2.

**1.66 Side Letter** shall mean the document attached hereto as Exhibit A, by and between the GUC Trust, the Debtors, New GM, and FTI Consulting (as trust monitor of the GUC Trust) dated September 23, 2011.

**1.67 Signatory Plaintiffs** means PIWD Counsel on behalf of the PIWD Plaintiffs identified on Schedule 2, and Co-Lead Counsel on behalf of the proposed class representatives for Ignition Switch Plaintiffs and proposed class representatives for certain Non-Ignition Switch Plaintiffs identified on Schedule 3.

**1.68 Supplemental Late Claims Motion** shall have the meaning ascribed to such term in the Preamble.

**1.69 Term Loan Avoidance Action** means the action captioned *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al.*, Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009).

**1.70 Term Loan Avoidance Action Claims** shall have the meaning ascribed to such term in the GUC Trust Agreement.

**1.71 Waiver** shall have the meaning ascribed to such term in Section 2.4.

**1.72 Waiver Provision** shall have the meaning ascribed to such term in Section 2.4.

**1.73 2016 Threshold Issues** means the five threshold issues identified in the Bankruptcy Court's Order to Show Cause of December 13, 2016.

**1.74 363 Sale** means the consummation of transactions that were approved on July 10, 2009 pursuant to the Sale Order.

## 2. MUTUAL AGREEMENTS OF THE PARTIES.

2.1 The Preamble constitutes an essential part of the Agreement and is incorporated herein.

2.2 As soon as practicable following the execution of this Agreement:

(a) the Parties shall prepare and file a motion in the Bankruptcy Court (the “**Notice Motion**”) (i) seeking authority to reallocate GUC Trust Assets; (ii) seeking approval of the proposed noticing procedures with respect to the Settlement Motion and Estimation Motion, and entry of the Notice Order and (iii) directing the production of information held by General Motors LLC pursuant to Federal Rule of Bankruptcy Procedure 2004,

(b) the Parties shall prepare and file a motion in the Bankruptcy Court (the “**Settlement Motion**”) seeking entry of an order (the “**Settlement Order**”) substantially in the form to be agreed upon by the Parties, and otherwise on terms acceptable to the GUC Trust, Co-Lead Counsel and PIWD Counsel, each in their sole and absolute discretion, approving the Settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, and

(c) the GUC Trust shall prepare and file the Estimation Motion seeking entry of the Estimation Order substantially in the form to be agreed upon by the Parties, and otherwise on terms acceptable to the GUC Trust, Co-Lead Counsel and PIWD Counsel, each in their sole and absolute discretion.<sup>2</sup>

2.3 Notice. By the Notice Motion, the Parties shall seek an order (the “**Notice Order**”) of the Bankruptcy Court approving the proposed notice procedures for noticing of the Settlement Motion and Estimation Motion, substantially in the form to be agreed upon by the Parties. The Parties further agree that following the entry of the Notice Order, they shall provide notice of the Settlement Motion and Estimation Motion in accordance with the procedures approved by the Bankruptcy Court. Based on notice plan proposals from leading notice administrators, the Parties have budgeted and the GUC Trust agrees to pay the reasonable costs and expenses for notice of the Settlement Motion in an amount up to \$6,000,000 (the “**Notice Cost Cap Amount**”). The requested notice procedures shall include (i) publication notice by multimedia channels that may include social media, e-mail, online car and consumer publications, and a settlement website (which, for the avoidance of doubt, may be the GUC Trust’s website at [www.mlcguctrust.com](http://www.mlcguctrust.com)) where all relevant documents and long form notice will be posted; (ii) notice by postcard to: (A) all persons in the United States who, prior to July 10, 2009, owned or leased a vehicle manufactured by Old GM that was subject to the Recalls; (B) all Pre-Closing Accident Plaintiffs who have filed a lawsuit against New GM as of the date of this Agreement; and (C) all Pre-Closing Accident Plaintiffs who have filed or joined a motion for authorization to file late claims against the GUC Trust; (iii) notice to all defendants in the

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<sup>2</sup> For the avoidance of doubt, the Settlement Motion and the Estimation Motion shall be filed but not served prior to the entry of the Notice Order.

Term Loan Avoidance Action via the Bankruptcy Court's ECF system and, to the extent a defendant is not registered to receive notice via the ECF system, via postcard, and (iv) notice via DTC's LENSNOTICE system to holders of beneficial units of the GUC Trust. The Signatory Plaintiffs agree to pay any amounts in excess of the Notice Cost Cap Amount. For the avoidance of doubt, the GUC Trust shall not be obligated to fund or otherwise be committed to fund the Notice Cost Cap Amount unless and until the Bankruptcy Court enters the Notice Order.

**2.4** In furtherance of the Key Objectives and as an inducement to the GUC Trust's entry into this Agreement and willingness to be bound by the terms of the Settlement Order and the Estimation Order, provided notice has been given in the form and manner approved by the Bankruptcy Court pursuant to the Notice Order, the Signatory Plaintiffs agree that they will (i) not object to any and all injunctions sought by the GUC Trust pursuant to Bankruptcy Code Section 105 solely to further effectuate the Waiver and (ii) support the entry of a Settlement Order that:

(a) authorizes and directs the GUC Trust to, within five (5) business days of the Settlement Effective Date, irrevocably pay fifteen million dollars (\$15,000,000) in cash (the "**Settlement Amount**") to a trust, fund or other vehicle (the "**Settlement Fund**") established and designated by the Signatory Plaintiffs (for purposes of administration of Plaintiffs' claims reconciliation and/or distributions to Plaintiffs under a subsequent allocation methodology); provided that, in the event the Signatory Plaintiffs have not designated such Settlement Fund within two (2) business days following the Settlement Effective Date, the GUC Trust shall place the Settlement Amount into an third party escrow account established by the GUC Trust;

(b) contains a provision which, effective upon (i) the Settlement Order becoming a Final Order (unless the GUC Trust waives the requirement that the Settlement Order be a Final Order in accordance with Section 3.1 hereof) and (ii) payment of the Settlement Amount, imposes a complete and irrevocable waiver and release on the part of all Plaintiffs with respect to any and all rights, claims and causes of action (including but not limited to any claims and causes of action arising as a result of the Recalls or with respect to General Unsecured Claims of the Plaintiffs arising under, or that may arise under, an Estimation Order), now existing or arising in the future, that any Plaintiff might directly or indirectly assert against the Debtors, their estates, the GUC Trust, the trust administrator of the GUC Trust, the GUC Trust Monitor, the GUC Trust Assets, the Motors Liquidation Company Avoidance Action Trust, the trustee for the Motors Liquidation Company Avoidance Action and the GUC Trust Beneficiaries, and channels all such claims or potential claims to the Settlement Fund for administration and satisfaction (the "**Waiver Provision**," and the waiver and release contemplated thereby, the "**Waiver**");

(c) contains a provision which, effective upon (i) the Settlement Order becoming a Final Order (unless the GUC Trust waives the requirement that the Settlement Order be a Final Order in accordance with Section 3.1 hereof) and (ii) payment of the Settlement Amount, imposes a complete and irrevocable waiver and release from the GUC Trust, the GUC Trust Beneficiaries, the Motors Liquidation Company Avoidance Action Trust, and

all defendants in the Term Loan Avoidance Action, with respect to any rights to the Settlement Fund, including the Settlement Amount (the “**GUC Waiver Provision**”);

(d) schedules a hearing in the Bankruptcy Court to consider the Estimation Motion and entry of the Estimation Order; and

(e) contains a provision which, effective upon (i) the Settlement Order becoming a Final Order (unless the GUC Trust waives the requirement that the Settlement Order be a Final Order in accordance with Section 3.1 hereof), and (ii) payment of the Settlement Amount, and subject to the entry of the Estimation Order by the Bankruptcy Court, imposes a complete and irrevocable waiver and release from the GUC Trust, the GUC Trust Beneficiaries, the Motors Liquidation Company Avoidance Action Trust, and all defendants in the Term Loan Avoidance Action, with respect to any rights to any Adjustment Shares (the “**Adjustment Shares Waiver Provision**”).

**2.5** In furtherance of the Key Objectives and as an inducement to the Signatory Plaintiffs’ entry into this Agreement and willingness to be bound by the terms of Settlement Order, including but not limited to the Waiver Provision, the GUC Trust, in settlement of the Disputed Issues, (x) consents to the late filing of the Proofs of Claim, as amended, and (y) agrees that it shall seek the entry of an Estimation Order that:

(a) estimates the aggregate allowed General Unsecured Claims of Plaintiffs against Sellers and/or the GUC Trust pursuant to Section 5.1 of the GUC Trust Agreement, Section 7.3 of the Plan, Section 3.2(c) of the AMSPA and the Side Letter in an amount that, as of the date of the Estimation Order, could equal or exceed \$10 billion, thus triggering the issuance of the maximum amount of the Adjustment Shares; and

(b) directs that, subject to Section 2.13 hereof, any such Adjustment Shares issued as a result of an Estimation Order, or the value of such Adjustment Shares, be promptly delivered by New GM to the Settlement Fund.

**2.6** Following the Settlement Order becoming a Final Order (unless the GUC Trust waives the requirement that the Settlement Order be a Final Order in accordance with Section 3.1 hereof), contemporaneously with the payment of the Settlement Amount by the GUC Trust to the Settlement Fund, the Waiver Provision shall become immediately and automatically effective and binding on all Plaintiffs, and the GUC Waiver Provision shall become immediately and automatically effective and binding on the GUC Trust, the GUC Trust Beneficiaries, the Motors Liquidation Company Avoidance Action Trust, and all defendants in the Term Loan Avoidance Action.

**2.7** Provided that the Settlement Order has become a Final Order (unless the GUC Trust waives the requirement that the Settlement Order be a Final Order in accordance with Section 3.1 hereof), then, contemporaneously upon the entry of the Estimation Order (i) the Adjustment Shares Waiver Provision shall become immediately and automatically effective and binding on the GUC Trust, the GUC Trust Beneficiaries, the Motors Liquidation Company Avoidance Action Trust, and all defendants in the Term Loan Avoidance Action, and (ii) the

GUC Trust shall be prohibited from, at any time, objecting to the allowance of the estimated claims at the amount set forth in such Estimation Order.

**2.8** The Parties shall use commercially reasonable efforts to have the Estimation Motion considered by the Court as soon as reasonably practicable following the entry of the Settlement Order, provided that, (i) regardless of when the hearing on the Estimation Order is held (and regardless of whether the request to enter the Estimation Order is approved or denied), this Agreement (including, but not limited to Sections 2.2, 2.4, 2.6, 2.11, and 2.12 hereof) and the Settlement Order shall remain binding; (ii) the Settlement Amount shall not be returned to the GUC Trust under any circumstances; and (iii) the GUC Trust shall not be required to incur costs (other than the costs of notice as set forth in Paragraph 2.3 hereof and the payment of the Settlement Amount) in excess of a reasonable amount in connection with prosecuting the Settlement Motion, the Estimation Motion, or any appeals thereof.

**2.9** Notwithstanding Sections 157(b)(2)(B) and (b)(2)(O) of Title 28 of the United States Code, in connection with the Settlement Motion, to the extent (if any) consent is required, the Pre-Closing Accident Plaintiffs represented by PIWD Counsel consent to the Bankruptcy Court estimating their personal injury and wrongful death claims against the Sellers and/or the GUC Trust for purposes of determining whether and to what extent the Plaintiffs' Allowed General Unsecured Claims in the aggregate exceed thirty-five billion dollars (\$35,000,000,000). The Pre-Closing Accident Plaintiffs represented by PIWD Counsel do not consent to estimation of their personal injury and wrongful death claims by the Bankruptcy Court for any other purpose or in connection with any other proceeding. If further adjudication of their personal injury and wrongful death claims is necessary notwithstanding entry of an Estimation Order, the Pre-Closing Accident Plaintiffs represented by PIWD Counsel expressly reserve their rights to have their claims tried (pursuant to Section 157(b)(5) of Title 28 of the United States Code) or estimated in the District Court, or in the district court in which the claim arose, as determined by the District Court.

**2.10** The Parties agree that all of the value of the Settlement Fund, minus any tax withholding, shall be reserved for the exclusive benefit of the Plaintiffs, subject only to costs associated with the administration of the Settlement Fund. For the avoidance of doubt, none of the GUC Trust, the GUC Trust Beneficiaries, the Motors Liquidation Company Avoidance Action Trust, and defendants of the Term Loan Avoidance Action, (i) shall have any rights or entitlements with respect to the Settlement Fund or the funds therein, and (ii) solely to the extent that an Estimation Order is entered by the Bankruptcy Court, shall have any rights or entitlements to any Adjustment Shares issued pursuant to such Estimation Order, or to the value of such Adjustment Shares.

**2.11** The Signatory Plaintiffs or, in the alternative, an administrator appointed by the Signatory Plaintiffs, shall establish the Settlement Fund (at the sole cost of the Signatory Plaintiffs) and the procedures for the administration and allocation to Plaintiffs of the Settlement Fund, including the criteria for Plaintiffs to assert a claim against the Settlement Fund, the methodology for allocating the Settlement Fund to Plaintiffs, and procedures for payment of Plaintiffs' attorneys' fees.



(a) Allocation of the Settlement Amount, any Adjustment Shares (or their value), and any other consideration contained in the Settlement Fund between the Plaintiffs asserting economic loss claims and the Plaintiffs asserting PIWD claims shall be determined and approved by the Bankruptcy Court. Notice of any agreement as to the proposed allocation of the Settlement Amount, any Adjustment Shares (or their value), and any other consideration contained in the Settlement Fund as between the group of Plaintiffs asserting claims for economic loss, on the one hand, and the group of Plaintiffs asserting PIWD claims, on the other hand, along with information about the hearing date and how and when to assert any objections, will be provided by, and at the sole cost of, Signatory Plaintiffs (and not the GUC Trust) via a settlement website to all known Plaintiffs whose rights might be affected by such allocation, and such Plaintiffs shall have an opportunity to object to the proposed allocation at a hearing, as when and if such agreement is reached.

(b) Approval of the qualifications and criteria for Plaintiffs to be eligible to receive distributions from the Settlement Amount, any Adjustment Shares (or their value), and any other consideration contained in the Settlement Fund shall be done by the Bankruptcy Court. Notice of any proposed criteria for determining the right or ability of each Plaintiff to receive a distribution from the Settlement Amount, any Adjustment Shares (or their value), and any other consideration contained in the Settlement Fund on account of a claim against Debtors based upon economic loss or for PIWD arising or occurring before the Bar Date, along with information about the hearing date and how and when to assert any objections, will be provided by, and at the sole cost of, Signatory Plaintiffs (and not the GUC Trust) via a settlement website to all known Plaintiffs whose rights might be affected by the establishment of criteria for the payment of such claims and such Plaintiffs shall have an opportunity to object to the proposed criteria at a hearing, as when and if such criteria is developed. Being defined as a Plaintiff does not assure any party that he, she, or it will receive a distribution from the Settlement Amount, any Adjustment Shares (or their value), or any other consideration contained in the Settlement Fund.

**2.12** Nothing in the Agreement is intended to waive any claims against New GM or to be an election of remedies against New GM; nor does the Agreement or any payments made in connection therewith represent full satisfaction of any claims against the Debtors, unless and until such claims are in fact paid in full from every available source; provided, however, that in no event shall any Plaintiff be permitted to seek any further payment or compensation from the GUC Trust in respect of its claims or otherwise, other than the Settlement Amount and the Adjustment Shares. Except as mandated otherwise under applicable law, (i) nothing in the Settlement Agreement shall be construed to waive (nor is anything in the Settlement Agreement intended by the Parties to waive) any claims that any Plaintiff may have against New GM or constitute an election of remedies by any Plaintiff; (ii) neither the Settlement Amount nor any Adjustment Shares (nor any distribution thereof to any Plaintiff) shall represent full and final satisfaction of any claim that any Plaintiff may have against New GM, all of which are expressly reserved; and (iii) the Bankruptcy Court's estimate of the Plaintiffs' Allowed General Unsecured Claims in an Estimation Order shall not operate as a cap on any of the claims of any of the Plaintiffs against New GM.

**2.13** Notwithstanding anything in the Agreement to the contrary, and although not anticipated to be required to do so, the GUC Trust, the GUC Trust Administrator, and any applicable withholding agent shall be entitled to deduct and withhold from the distribution of the Adjustment Shares otherwise payable to the Settlement Fund pursuant to this Agreement any amount as may be required to be deducted and withheld with respect to the making of such payment under the United States Internal Revenue Code of 1986, as amended (the “**Code**”), or any other provision of tax law. The GUC Trust and the GUC Trust Administrator agree to provide the Settlement Fund with reasonable notice of its intent to deduct and withhold if required to do so, and to the extent practicable, consider in good faith any position that the Settlement Fund raises as to why withholding is not required or alternative arrangements proposed by the Settlement Fund that may avoid the need for withholding. To the extent that amounts are so withheld or deducted by the GUC Trust, the GUC Trust Administrator, or other applicable withholding agent, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Settlement Fund. In addition, in accordance with Section 6.1(e) of the GUC Trust Agreement and taking into account Section 7.3 of the GUC Trust Agreement, the GUC Trust Administrator may hold back from the distributions of Adjustment Shares contemplated by this Agreement sufficient Adjustment Shares or amounts in order to settle the tax liabilities of the GUC Trust incurred as a result of the transactions contemplated by this Agreement. To the extent such hold back of Adjustment Shares is necessary, the GUC Trust Administrator shall monetize such held back Adjustment Shares on the same date as the distribution of Adjustment Shares is provided to the Settlement Fund. Furthermore, the GUC Trust Administrator will request an expedited determination of taxes of the GUC Trust under Section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the GUC Trust for any and all tax periods that include transactions contemplated by this Agreement. Upon such determination (or, in the event a court of competent jurisdiction decides that such a determination is unavailable, as soon as reasonably practicable but no later than the expiration of the applicable statute of limitations), the GUC Trust Administrator will distribute in accordance with provisions of this Agreement any amounts held back in excess of any tax liabilities incurred by the GUC Trust as a result of the transactions contemplated by this Agreement. The GUC Trust and the GUC Trust Administrator agree to provide the Settlement Fund with reasonable notice of (a) any intent to hold back Adjustment Shares and (b) the amount to be withheld, with the intent that such withheld amount would not exceed what could be the final tax liability of the GUC Trust as a result of the transactions contemplated by this Agreement.

**3. MISCELLANEOUS PROVISIONS  
APPLICABLE TO THIS AGREEMENT.**

**3.1 Settlement Effective Date.** This Agreement shall become effective and binding on the Parties on the date on which this Agreement is fully executed by each of the Parties. The Settlement set forth in this agreement (including but not limited to the required payment of the Settlement Amount, the delivery of the Waiver as set forth herein, the GUC Waiver Provision, and to the extent provided in section 2.4(e) hereof, the Adjustment Shares Waiver Provision) shall become effective on the date that the Settlement Order becomes a Final Order (the “**Settlement Effective Date**”), provided, however, that from and after the date the Settlement Order is entered by the Bankruptcy Court, the GUC Trust may waive the requirement that the Settlement Order be a Final Order.

### **3.2 Termination.**

(A) Automatic Termination. This Agreement shall immediately terminate as to all Parties in the event that (a) the Bankruptcy Court denies approval of the Notice Order (or requires notice procedures materially different from those set forth in Section 2.2 hereof that is not otherwise reasonably acceptable to the Parties), or (b) the Bankruptcy Court denies approval of the Settlement Motion as it relates to the Settlement Order (for the avoidance of doubt, this Agreement shall not immediately terminate if the Bankruptcy Court denies approval of the Estimation Order). In the event of such automatic termination, this Agreement shall be null and void, and each of the Parties' respective interests, rights, remedies and defenses shall be fully restored without prejudice as if this Agreement (except as set forth in Sections 3.3, 3.4, 3.5, 3.13, 3.15, and 3.19) had never existed and the Parties shall be returned to their respective positions *status quo ante*.

(B) Termination by the GUC Trust. This Agreement shall be terminable at the option of the GUC Trust in the event that (a) the Notice Order is not entered on or before 60 days after filing the Notice Motion, or (b) the Settlement Effective Date does not occur on or before 90 days after notice of the Settlement Motion has been provided pursuant to Section 2.3 hereto and the Notice Order (each of (a) and (b) the "**Outside Date**"). Following the passage of the Outside Date, the GUC Trust shall be entitled to send a notice of termination to the Signatory Plaintiffs in accordance with Section 3.15 hereof, with the Agreement automatically terminating on the date that such notice is received by the Signatory Plaintiffs. In the event of such termination, this Agreement shall be null and void, and each of the Parties' respective interests, rights, remedies and defenses shall be fully restored without prejudice as if this Agreement (except as set forth in Sections 3.3, 3.4, 3.5, 3.13, 3.15, and 3.19) had never existed and the Parties shall be returned to their respective positions *status quo ante*.

(C) Termination by Any Party for Cause. In the event of any material breach of the terms of this Agreement, the non-breaching Party may elect (in addition to any other remedies available to the non-breaching party hereunder or under applicable law) to terminate this Agreement by (i) providing a Communication to the breaching party as set forth in Section 3.15 below, and affording the breaching party a five (5) business day period in which to cure the purported breach, and (ii) absent such cure or the commencement of an action in the Bankruptcy Court with respect to the existence of any such breach, by providing a follow-up Communication to the breaching Party as set forth in Section 3.15 below, that declares the Agreement to be terminated. Following such termination for cause, the terms of the Agreement shall no longer be binding on the non-breaching Party (except as set forth in Sections 3.3, 3.4, 3.5, 3.13, 3.15, and 3.19).

**3.3 Attorneys' Fees.** Except as otherwise provided for herein, each of the Parties shall pay its own court costs, attorneys' fees, and all other expenses, costs, and fees incurred relating to this Agreement and any related litigation, including but not limited to the GM MDL and Motions to Enforce litigation. If any lawsuit or proceeding is required to enforce the terms of this Agreement, the prevailing party in any such lawsuit or proceeding shall be entitled to reasonable attorney's fees and costs.

**3.4 No Admission.** Nothing in this Agreement shall be deemed an admission of any kind. To the extent provided by Federal Rule of Evidence 408 and any applicable state rules of evidence, this Agreement and all negotiations relating thereto shall not be admissible into evidence in any proceeding other than in support of the Settlement Motion and proposed entry of the Settlement Order and Estimation Order or in a proceeding to enforce the terms of this Agreement.

**3.5 Remedies.** Each of the Parties retain all remedies available in law or equity for breach of this Agreement by any Party, including, without limitation, the right of a non-breaching Party to seek specific performance and injunctive or other equitable relief as a remedy for any such breach.

**3.6 No Litigation.** Except as may be necessary to enforce the terms of this Agreement, the Parties and any other person who is an intended beneficiary hereunder, agree that she or he shall not commence or proceed with any action, claim, suit, proceeding or litigation against any other Party, directly or indirectly, regarding or relating to the matters described in this Agreement, or take any action inconsistent with the terms of the Agreement.

**3.7 Further Assurances.** Each of the Parties covenant to, from time to time, execute and deliver such further documents and instruments and take such other actions as may be reasonably required or appropriate to evidence, effectuate, or carry out the intent and purposes of this Agreement or to perform its obligations under this Agreement and the transactions contemplated thereby.

**3.8 Cooperation.** The Parties agree to reasonably cooperate with one another to effectuate an efficient and equitable implementation of this Agreement.

**3.9 Counterparts; Facsimile; Signatures.** This Agreement may be executed in any number of counterparts and by different Parties to this Agreement on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by any of the Parties by facsimile or .pdf electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement, shall be deemed to be an original signature hereto, and shall be admissible as such in any legal proceeding to enforce this Agreement.

**3.10 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective agents, partners, attorneys, employees, representatives, officers, directors, shareholders, divisions, subsidiaries, affiliates, transferees, heirs, executors, administrators, personal representatives, legal representatives, successors, and assigns.

**3.11 Integration.** This Agreement constitutes the entire agreement and understanding among the Parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements, representations and understandings between or among any of the Parties hereto relating to such subject matter. In entering into this Agreement, the Parties and each of them acknowledge that they are not relying on any statement, representation, warranty, covenant or agreement of any kind made by any other party hereto or any employee or agent of

any other party hereto, except for the representations, warranties, covenants and agreements of the Parties expressly set forth herein.

**3.12 Amendment.** Except as otherwise specifically provided in this Agreement, no amendment, modification, rescission, waiver or release of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Parties.

**3.13 Interpretation.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, and the Parties agree to take any and all steps which are necessary in order to enforce the provisions hereof.

**3.14 Severability.** The terms and conditions of this Agreement are not severable. However, if any provision or part of any provision of this Agreement is for any reason declared or determined by a court of competent jurisdiction to be invalid, unenforceable, or contrary to public policy, law, statute, or ordinance, the validity of the remaining parts, terms, or provisions of this Agreement shall not be affected thereby and shall remain valid and fully enforceable, and such invalid, unenforceable, or illegal part or provision shall not be deemed to be part of this Agreement.

**3.15 Notices.** Any notice, demand, request, consent, approval, declaration or other communication (a "**Communication**") under this Agreement shall be in writing and shall be given or delivered (i) by a nationally recognized private overnight courier service addressed as indicated in Schedule 1 annexed hereto or to such other address as such party may indicate by a notice delivered to the other Parties hereto in accordance with the provisions hereof; or (ii) to the extent that such Communication has been filed with the Bankruptcy Court, via the electronic distribution means used by the Bankruptcy Court. Any Communication shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the first business day following the date upon which it is delivered for overnight delivery to such courier service.

**3.16 Choice of Law and Forum; Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflict of laws principles. The District Court and the Bankruptcy Court shall have jurisdiction to resolve any dispute arising out of, related to or in connection with this Agreement to the exclusion of any other court, and the Parties hereby consent to the jurisdiction of the District Court and the Bankruptcy Court for resolution of such disputes and agree that they shall not attempt to litigate any such dispute in any other court.

**3.17 Advice of Counsel.** Each Party represents and acknowledges that it has been represented by an attorney with respect to this Agreement and any and all matters covered by or related to such Agreement. Each Party further represents and warrants to each other that the execution and delivery of this Agreement has been duly authorized by each of the Parties after consultation with counsel, that the persons signing this Agreement on their behalf below have been fully authorized by their respective Parties to do so, and that the undersigned do fully understand the terms of this Agreement and have the express authority to enter into this Agreement.

**3.18 Assignment.** No assignment of this Agreement or of any rights or obligations hereunder may be made by any party hereto without the prior written consent of the other Parties hereto, and any attempted assignment without such prior consent shall be null and void.

**3.19 Waiver.** Except as otherwise specifically provided in this Agreement, any provision of this Agreement may be waived only by a written instrument signed by the Party against whom enforcement of such waiver is sought.

**3.20 Headings, Number, and Gender.** The descriptive headings of the sections of this Agreement are included for convenience of reference only and shall have no force or effect in the interpretation or construction of this Agreement. As used in this Agreement, the singular shall include the plural, and the masculine shall include the feminine and neutral genders, and vice versa.

**3.21 Waiver of Jury Trial.** Each of the Parties hereby irrevocably waives its rights, if any, to a jury trial for any claim or cause of action based upon or arising out of this Agreement.

**3.22 Authority.** Each of the Parties represents and warrants that the execution and delivery by it of this Agreement, and the performance of its obligations hereunder have been duly authorized by all necessary action on its part.

**3.23 GUC Trust Fiduciary Duties.** Nothing in this Agreement shall otherwise require the GUC Trust or the GUC Trust Administrator to take any action, or to refrain from taking any action, to the extent inconsistent with its fiduciary obligations under applicable law (as reasonably determined by them in good faith after consultation with legal counsel).

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

Wilmington Trust National Association,  
Not individually, but solely in its capacity  
as GUC Trust Administrator and Trustee of  
the GUC Trust

By: [Signature]  
Name: David A. Vanaskey, Jr.

Title: Vice President, Wilmington Trust  
Company

BROWN RUDNICK LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_  
Name: Edward S. Weisfelner  
Name: Howard S. Steel

Title: Designated Counsel for the Ignition  
Switch Plaintiffs and certain Non-Ignition  
Switch Plaintiffs in the Bankruptcy Court

STUTZMAN, BROMBERG, ESSERMAN &  
PLIFKA, P.C.

On behalf of Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_  
Name: Sander L. Esserman

Title: Designated Counsel for the Ignition  
Switch Plaintiffs and certain Non-Ignition  
Switch Plaintiffs in the Bankruptcy Court

HAGENS BERMAN SOBOL SHAPIRO LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_  
Name: Steve W. Berman

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_  
Name: Elizabeth J. Cabraser

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

GOODWIN PROCTER LLP

On behalf of the PIWD Plaintiffs Represented  
By Hilliard Martinez Gonzales L.L.P. and the  
Law Offices of Thomas J. Henry

By: \_\_\_\_\_  
Name: William P. Weintraub  
Name: Gregory W. Fox

Title: Counsel to the PIWD Plaintiffs  
Represented By Hilliard Martinez Gonzales  
L.L.P. and the Law Offices of Thomas J.  
Henry

HILLIARD MARTINEZ GONZALES LLP

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PLIFKA, P.C.

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By: \_\_\_\_\_

Name: Sander L. Esserman

Title: Designated Counsel for the Ignition  
Switch Plaintiffs and certain Non-Ignition  
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On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_

Name: Steve W. Berman

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_

Name: Elizabeth J. Cabraser

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

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By: \_\_\_\_\_

Name: William P. Weintraub

Name: Gregory W. Fox

Title: Counsel to the PIWD Plaintiffs  
Represented By Hilliard Martinez Gonzales  
L.L.P. and the Law Offices of Thomas J.  
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By: \_\_\_\_\_

Name: David A. Vanaskey, Jr.

Title: Vice President, Wilmington Trust  
Company

BROWN RUDNICK LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_

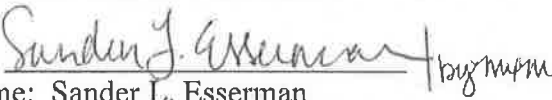
Name: Edward S. Weisfelner

Name: Howard S. Steel

Title: Designated Counsel for the Ignition  
Switch Plaintiffs and certain Non-Ignition  
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STUTZMAN, BROMBERG, ESSERMAN &  
PLIFKA, P.C.

On behalf of Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By:   
Name: Sander L. Esserman

Title: Designated Counsel for the Ignition  
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Switch Plaintiffs in the Bankruptcy Court

HAGENS BERMAN SOBOL SHAPIRO LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_

Name: Steve W. Berman

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_

Name: Elizabeth J. Cabraser

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

GOODWIN PROCTER LLP

On behalf of the PIWD Plaintiffs Represented  
By Hilliard Martinez Gonzales L.L.P. and the  
Law Offices of Thomas J. Henry

By: \_\_\_\_\_

Name: William P. Weintraub

Name: Gregory W. Fox

Title: Counsel to the PIWD Plaintiffs  
Represented By Hilliard Martinez Gonzales  
L.L.P. and the Law Offices of Thomas J.  
Henry

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By: \_\_\_\_\_

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Title: Vice President, Wilmington Trust  
Company

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On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

By: \_\_\_\_\_

Name: Edward S. Weisfelner

Name: Howard S. Steel

Title: Designated Counsel for the Ignition  
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On behalf of the Ignition Switch Plaintiffs and  
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By:  \_\_\_\_\_

Name: Steve W. Berman

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Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

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On behalf of the Ignition Switch Plaintiffs and  
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By: \_\_\_\_\_

Name: Elizabeth J. Cabraser

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

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On behalf of the PIWD Plaintiffs Represented  
By Hilliard Martinez Gonzales L.L.P. and the  
Law Offices of Thomas J. Henry

By: \_\_\_\_\_

Name: William P. Weintraub

Name: Gregory W. Fox

Title: Counsel to the PIWD Plaintiffs  
Represented By Hilliard Martinez Gonzales  
L.L.P. and the Law Offices of Thomas J.  
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Name: Howard S. Steel

Title: Designated Counsel for the Ignition  
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Name: Sander L. Esserman

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On behalf of the Ignition Switch Plaintiffs and  
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By: \_\_\_\_\_  
Name: Steve W. Berman

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

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On behalf of the Ignition Switch Plaintiffs and  
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Name: Elizabeth J. Cabraser

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Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

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On behalf of the PIWD Plaintiffs Represented  
By Hilliard Martinez Gonzales L.L.P. and the  
Law Offices of Thomas J. Henry

By: \_\_\_\_\_  
Name: William P. Weintraub  
Name: Gregory W. Fox

Title: Counsel to the PIWD Plaintiffs  
Represented By Hilliard Martinez Gonzales  
L.L.P. and the Law Offices of Thomas J.  
Henry

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Name: David A. Vanaskey, Jr.

Title: Vice President, Wilmington Trust  
Company

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On behalf of the Ignition Switch Plaintiffs and  
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Name: Sander L. Esserman

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Switch Plaintiffs and certain Non-Ignition  
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On behalf of the Ignition Switch Plaintiffs and  
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By: \_\_\_\_\_

Name: Steve W. Berman

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Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

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BERNSTEIN, LLP

On behalf of the Ignition Switch Plaintiffs and  
certain Non-Ignition Switch Plaintiffs

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Name: Elizabeth J. Cabraser

Title: Co-Lead Counsel for the Ignition Switch  
Plaintiffs and certain Non-Ignition Switch  
Plaintiffs in the MDL Court

GOODWIN PROCTER LLP

On behalf of the PIWD Plaintiffs Represented  
By Hilliard Martinez Gonzales L.L.P. and the  
Law Offices of Thomas J. Henry

By:   
Name: William P. Weintraub

Name: Gregory W. Fox

Title: Counsel to the PIWD Plaintiffs  
Represented By Hilliard Martinez Gonzales  
L.L.P. and the Law Offices of Thomas J.  
Henry

THE LAW OFFICES OF THOMAS J.  
HENRY


On behalf of the PIWD Plaintiffs

By: \_\_\_\_\_  
Name: Thomas J. Henry

Title: Counsel to the PIWD Plaintiffs

HILLIARD MARTINEZ GONZALES LLP

On behalf of the PIWD Plaintiffs

By:   
Name: Robert Hilliard

Title: Counsel to the PIWD Plaintiffs

ANDREWS MYERS, P.C.

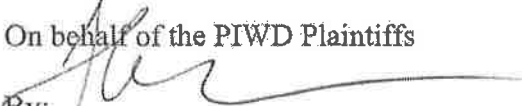
On behalf of the PIWD Plaintiffs

By: \_\_\_\_\_  
Name: Lisa M. Norman

Title: Counsel to the PIWD Plaintiffs

THE LAW OFFICES OF THOMAS J.  
HENRY


On behalf of the PIWD Plaintiffs

By:   
Name: Thomas J. Henry

Title: Counsel to the PIWD Plaintiffs

HILLIARD MARTINEZ GONZALES LLP

On behalf of the PIWD Plaintiffs

By:   
Name: Robert Hilliard

Title: Counsel to the PIWD Plaintiffs

ANDREWS MYERS, P.C.

On behalf of the PIWD Plaintiffs

By: \_\_\_\_\_  
Name: Lisa M. Norman

Title: Counsel to the PIWD Plaintiffs

THE LAW OFFICES OF THOMAS J.  
HENRY

On behalf of the PIWD Plaintiffs

By: \_\_\_\_\_  
Name: Thomas J. Henry

Title: Counsel to the PIWD Plaintiffs

HILLIARD MARTINEZ GONZALES LLP

On behalf of the PIWD Plaintiffs

By: \_\_\_\_\_  
Name: Robert Hilliard

Title: Counsel to the PIWD Plaintiffs

ANDREWS MYERS, P.C.

On behalf of the PIWD Plaintiffs

By: Lisa M. Norman  
Name: Lisa M. Norman

Title: Counsel to the PIWD Plaintiffs

**EXHIBIT A**



**MOTORS LIQUIDATION COMPANY GUC TRUST**

c/o Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware, 19890-1615

September 23, 2011

Motors Liquidation Company  
401 S. Old Woodward, Suite 370  
Birmingham, Michigan 48009  
Attn: Ted Stenger

Remediation And Liability Management Company, Inc.  
c/o Motors Liquidation Company  
401 S. Old Woodward, Suite 370  
Birmingham, Michigan 48009  
Attn: Ted Stenger

General Motors LLC  
300 Renaissance Center]  
Detroit Michigan 48265-3000  
Attn: Lawrence Buonomo

FTI Consulting, Inc.  
1201 W. Peachtree St., Suite 600  
Atlanta, GA 30309  
Attn: Anna Phillips

**Re: Adjustment Shares**

Ladies and Gentlemen,

Reference is made to the (i) Amended and Restated Master Sale and Purchase Agreement, dated as of July 5, 2009 (as amended, the "MSPA"), by and among General Motors Corporation (now known as Motors Liquidation Company) ("MLC"), certain of MLC's affiliated debtor entities listed therein (the "MSPA Affiliated Debtors") and NGMCO, Inc. (now known as General Motors LLC) ("GM"), (ii) Motors Liquidation Company GUC Trust Agreement, dated as of March 30, 2011 (as amended, the "GUC Trust Agreement"), by and among MLC, the MSPA Affiliated Debtors and certain other MLC affiliates (the "Debtors"), Wilmington Trust Company, solely in its capacity as GUC Trust Administrator and trustee of the Motors Liquidation Company GUC Trust (the "GUC Trust Administrator"), and FTI Consulting, Inc., solely in its capacity as GUC Trust Monitor of the Motors Liquidation Company GUC Trust, and (iii) Debtors' Second Amended Joint Chapter 11 Plan (the "Plan"), as confirmed by order of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on March 29, 2011. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the GUC Trust Agreement.

Pursuant to the GUC Trust Agreement and the Plan, the Debtors are the parties designated to pursue and receive any Adjustment Shares (as such term is defined in the MSPA) prior to the GUC Trust Funding Date and the Motors Liquidation Company GUC Trust is the party designated to pursue and receive any Adjustment Shares on and after the GUC Trust Funding Date. In order to address any ambiguity under the MSPA or the GUC Trust Agreement regarding the timing and conditions precedent to the issuance of

any Adjustment Shares and in order to eliminate the potential burden on the Bankruptcy Court of estimating claims in order to calculate whether Adjustment Shares should be issued, the parties hereto enter into this letter agreement to fix procedures with respect thereto.

Notwithstanding Section 5.1 of the GUC Trust Agreement or otherwise, and in accordance with Sections 2.3(d) and 6.12 of the GUC Trust Agreement, the undersigned parties agree that the GUC Trust Administrator may, at any time (which for the avoidance of doubt shall not be restricted to on or before the 180th day following the Effective Time), seek (or require the Debtors to seek, as applicable) the Claims Estimate Order (as such term is defined in the MSPA). In the event that the GUC Trust Administrator determines to seek the Claims Estimate Order prior to the GUC Trust Funding Date, the Debtors agree to file and pursue the Claims Estimate Order (in accordance with Sections 2.3(d) and 6.12 of the GUC Trust Agreement) until the GUC Trust Funding Date, at which time the entitlement to pursue the Claims Estimate Order shall be transferred to the GUC Trust Administrator. Notwithstanding anything to the contrary in this letter agreement, in the event that any Adjustment Shares are required to be issued prior to the GUC Trust Funding Date, such Adjustment Shares shall be issued to MLC in accordance with section 3.2(c) of the MSPA.

The parties acknowledge that the GUC Trust Administrator's current intention is to delay a request for a Claims Estimate Order (which may be one or multiple orders) to such time, if any, that the GUC Trust Administrator determines, in its sole and absolute discretion, that the allowed eligible claims are likely to exceed \$35 billion in the aggregate. This delay is intended to eliminate the risk and uncertainty to all parties of estimating at this time the outcome of ongoing litigation with respect to Disputed Claims (as such term is defined in the Plan).

By executing the acknowledgment below, the parties further agree that at any time on or following the GUC Trust Funding Date, the GUC Trust Administrator (as successor to MLC) (i) may seek the Claims Estimate Order (or continue the prosecution of any Claims Estimate Order previously sought by the Debtors), and (ii) shall be entitled to receive the Adjustment Shares, in each case in accordance with Section 3.2(c) of the MSPA as if it were MLC.

For avoidance of doubt, this letter agreement is not intended to amend the MSPA; rather it is intended to clarify the parties' rights and responsibilities thereunder.

This letter agreement may be executed in multiple counterparts (including by means of telecopied or PDF signature pages), each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Each party represents and warrants that (i) it has all requisite power and authority to execute and deliver this letter agreement, (ii) this letter agreement constitutes the legal, valid and binding obligation of such party (assuming the due authorization, execution and delivery of this letter agreement by the other parties), and (iii) no further consent, approval or authorization is required on the part of any such party. This letter agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

*[Signature Page Follows]*

Very truly yours,

MOTORS LIQUIDATION COMPANY GUC TRUST

By: WILMINGTON TRUST COMPANY, solely in its  
capacity as GUC Trust Administrator

By: \_\_\_\_\_

Name:

Title:

**David A. Vanaskey, Jr.**  
**Vice President**

Acknowledged and agreed to on  
this \_\_\_\_ day of September, 2011 by:

MOTORS LIQUIDATION COMPANY

By: \_\_\_\_\_

Name:

Title:

REMEDICATION AND LIABILITY MANAGEMENT COMPANY, INC:

By: \_\_\_\_\_

Name:

Title:

GENERAL MOTORS LLC

By: \_\_\_\_\_

Name:

Title:

FTI CONSULTING, INC.,  
solely in its capacity as GUC Trust Monitor

By: \_\_\_\_\_

Name:

Title:

Very truly yours,

MOTORS LIQUIDATION COMPANY GUC TRUST

By: WILMINGTON TRUST COMPANY, solely in its capacity as GUC Trust Administrator

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed to on this \_\_\_\_ day of September, 2011 by:

MOTORS LIQUIDATION COMPANY

By: Ted Stenger  
Name: STENGER  
Title: EVA

REMEDATION AND LIABILITY MANAGEMENT COMPANY, INC:

By: Ted Stenger  
Name: STENGER  
Title: EVA

GENERAL MOTORS LLC

By: \_\_\_\_\_  
Name:  
Title:

FTI CONSULTING, INC.,  
solely in its capacity as GUC Trust Monitor

By: \_\_\_\_\_  
Name:  
Title:

Very truly yours,

MOTORS LIQUIDATION COMPANY GUC TRUST

By: WILMINGTON TRUST COMPANY, solely in its  
capacity as GUC Trust Administrator

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed to on  
this \_\_\_\_ day of September, 2011 by:


MOTORS LIQUIDATION COMPANY

By: \_\_\_\_\_  
Name:  
Title:

REMEDIATION AND LIABILITY MANAGEMENT COMPANY, INC:

By: \_\_\_\_\_  
Name:  
Title:

GENERAL MOTORS LLC

By:   
Name: Michael P. Millikin  
Title: Senior Vice President and General Counsel

FTI CONSULTING, INC.,  
solely in its capacity as GUC Trust Monitor

By: \_\_\_\_\_  
Name:  
Title:

Very truly yours,

MOTORS LIQUIDATION COMPANY GUC TRUST

By: WILMINGTON TRUST COMPANY, solely in its  
capacity as GUC Trust Administrator

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed to on  
this \_\_\_\_ day of September, 2011 by:

MOTORS LIQUIDATION COMPANY

By: \_\_\_\_\_  
Name:  
Title:

REMEDIATION AND LIABILITY MANAGEMENT COMPANY, INC:

By: \_\_\_\_\_  
Name:  
Title:

GENERAL MOTORS LLC

By: \_\_\_\_\_  
Name:  
Title:

FTI CONSULTING, INC.,  
solely in its capacity as GUC Trust Monitor

By: *Anna Phillips*  
Name: *Anna Phillips*  
Title: *Senior Managing Director*

Schedule 1

If to the GUC Trust:

c/o Drinker Biddle & Reath LLP  
1177 Ave. of the Americas  
41st Floor  
New York, NY 10036  
Attn: Kristin K. Going  
Clay Pierce

If to the PIWD Plaintiffs represented by Hilliard Martinez Gonzales, LLP and the Law Offices of Thomas J. Henry:

c/o Hilliard Martinez Gonzales, LLP  
719 South Shoreline  
Suite 500  
Corpus Christi, TX 78401  
Attn: Robert C. Hilliard, Esq.

c/o The Law Offices of Thomas J. Henry  
4715 Fredericksburg, Suite 507  
San Antonio, TX 78229  
Attn: Thomas J. Henry, Esq.

c/o Goodwin Procter LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Attn: William P. Weintraub  
Gregory W. Fox

If to the PIWD Plaintiffs represented by Andrews Myers, P.C.:

c/o Andrews Myers, P.C.  
1885 St. James Place, 15th Floor  
Houston, Texas 77056  
Attn: Lisa M. Norman

If to the Ignition Switch Plaintiffs and/or certain Non-Ignition Switch Plaintiffs (or Co-Lead Counsel on their behalf):

c/o Hagens Berman Sobol Shapiro LLP  
1918 Eighth Avenue, Suite 3300  
Seattle, WA 98101  
Attn: Steve W. Berman, Esq.

c/o Loeff Cabraser Heimann & Bernstein, LLP  
275 Battery Street, 29th Floor  
San Francisco, California 94111  
Attn: Elizabeth J. Cabraser, Esq.

c/o Brown Rudnick LLP  
Seven Times Square  
New York, New York 10036  
Attn: Edward S. Weisfelner  
Howard S. Steel

c/o Stutzman, Bromberg, Esserman & Plifka,  
a Professional Corporation  
2323 Bryan Street, Ste 2200  
Dallas, Texas 75201  
Attn: Sander L. Esserman

Schedule 2



**HMG/TJHIA Pre-Closing Accident Plaintiffs**

1.	Christine Albert	14V047000
2.	Vangie Anderson	14V047000
3.	Horace Atkinson, individually, and as representative of the estate of Tammeye Jan Atkinson	14V047000
4.	Sandra Baylor, individually and as next friend of Kyle Wojciechowski	14V047000
5.	Keith Bennett	14V047000
6.	Walter Bennett	14V047000
7.	Kathleen Bonito	14V047000
8.	Alicia Bowyer	14V047000
9.	Linda Braxton	14V047000
10.	Sandra Bremenkamp	14V047000
11.	Joseph Brooks	14V047000
12.	Rose Brooks	14V047000
13.	Cathalina Brown	14V047000
14.	Amanda Buckley	14V047000
15.	Connell Caldwell	14V047000
16.	Nicole Carter	14V047000
17.	Dessie Chandler	14V047000
18.	Hans Charles	14V047000
19.	Donna Collins, individually and as next friend of Billy Collins	14V047000
20.	Ruth Cuthbertson	14V047000
21.	Gayla Deforest	14V047000
22.	Michelle Delhommer, individually and as next friend of Justice Delhommer and Justin Kyle	14V047000
23.	Michael Deming	14V047000
24.	Peter Doinidis Jr.	14V047000
25.	Alan Dyer, individually and as representative of the estate of Emma Dyer	14V047000
26.	Margaret Dyer	14V047000
27.	Kesha Edmonson	14V047000
28.	Shiza Edwards	14V047000
29.	Abraham Elias	14V047000
30.	Diane Elias	14V047000
31.	Michael Elias	14V047000
32.	Kristi Fair	14V047000

33.	Edward Ferruolo	14V047000
34.	Robert Fish	14V047000
35.	Jessica Fleming	14V047000
36.	Sandra Gibbs	14V047000
37.	Robert Gillespie	14V047000
38.	Tiffany Gomez	14V047000
39.	Catherine Gordon	14V047000
40.	Crystal Greene	14V047000
41.	Stephanie Grooms	14V047000
42.	Kevin Gross	14V047000
43.	Michelle Groves	14V047000
44.	Robert Haislah	14V047000
45.	Donnie Hamilton	14V047000
46.	Paul Harmon	14V047000
47.	Wade Hawes	14V047000
48.	Deana Hemminger	14V047000
49.	Roderick Hill	14V047000
50.	Wesley Hubbard	14V047000
51.	Erik Hultgren	14V047000
52.	Gwendolyn James	14V047000
53.	Robert Jennings	14V047000
54.	Michael Johansen	14V047000
55.	Jason Johndro	14V047000
56.	Kara Johnson	14V047000
57.	Volanda Jones	14V047000
58.	Gloria Kage	14V047000
59.	Rahseda Kalilou	14V047000
60.	Michael Kavanaugh	14V047000
61.	William Keller	14V047000
62.	Andrea Laird	14V047000
63.	James Latimer	14V047000
64.	Nachel Leblanc	14V047000
65.	Gilbert LeDay	14V047000
66.	Janeshea Leonard	14V047000
67.	Kevin Lissner	14V047000
68.	Jenna Loree	14V047000
69.	Mark Love	14V047000
70.	Teeynesha Love	14V047000
71.	Kon Lueth	14V047000

72.	Patricia Lynch	14V047000
73.	Patricia McCloud	14V047000
74.	Sharon McGhee	14V047000
75.	Randall McPherson	14V047000
76.	Eileen Mency	14V047000
77.	Melanie Mosley	14V047000
78.	Edson Myers	14V047000
79.	Ashley Page	14V047000
80.	Sammie Page	14V047000
81.	Kenneth Pearce	14V047000
82.	Sharon Powell	14V047000
83.	Katherine Prados	14V047000
84.	Jami Pruitt	14V047000
85.	Jose Quintanilla	14V047000
86.	Rosalita Quintanilla	14V047000
87.	Samuel Raniolo	14V047000
88.	Justin Robbins	14V047000
89.	Miranda Robinson	14V047000
90.	Dailene Rodgers	14V047000
91.	Rafael Rodriguez	14V047000
92.	Samara Roura	14V047000
93.	Amy Ruppert	14V047000
94.	Carla Santiago	14V047000
95.	Deborah Scroggins	14V047000
96.	Patricia Shinko	14V047000
97.	Deidra Shipman	14V047000
98.	Rodney Sims	14V047000
99.	Clara Small	14V047000
100.	George Smith	14V047000
101.	Rickey Sorrells	14V047000
102.	Christina Spencer	14V047000
103.	Carol Spiller	14V047000
104.	Deborah Stanley	14V047000
105.	Cheryl Stevens	14V047000
106.	Aliana Strauss	14V047000
107.	Marshell Swafford	14V047000
108.	Johnnie Sykes	14V047000
109.	Kenya Taylor	14V047000
110.	Teresa Thomison	14V047000

111.	Hilda Vasquez	14V047000
112.	Erica Walker	14V047000
113.	Tionnte Walker	14V047000
114.	Isaac Warren	14V047000
115.	Diana Watkins	14V047000
116.	Rhonda Weston	14V047000
117.	Virginia White	14V047000
118.	Ashley Wiley	14V047000
119.	Alexander Williams	14V047000
120.	Johnny Wilson	14V047000
121.	Vernessa Wright	14V047000
122.	George Zamora	14V047000
123.	Ernest Adams, individually, and as representative of the estate of Elizabeth Williams	14V400000
124.	Scott Amsdill	14V400000
125.	Dennis Bannarn	14V400000
126.	Linda Barkwell, individually, and as representative of the estate of Randall Forrester	14V355000
127.	Jasmine Barner	14V400000
128.	Lowary Barrett	14V400000
129.	Virginia Bennett	14V400000
130.	Johnnie Bowers	14V355000
131.	David Boyd	14V400000
132.	Melinda Brown, individually, and as representative of the estate of Brenda Inman	14V400000
133.	Darell Buie	14V400000
134.	Jeanine Cady, individually, and as representative of the estate of Sandy Cady	14V355000
135.	Kateasha Cardell	14V400000
136.	Charles Carpenter, individually, and as representative of the estate of Brenda Inman	14V400000
137.	Isaac Casey	14V394000
138.	Edgar Chapman	14V400000
139.	Richard Crew	14V400000
140.	Eric Cunningham	14V400000
141.	Brittany Delk	14V400000
142.	Grant Delk	14V400000
143.	Sherille Delk	14V400000

144.	Sherille Delk, individually and as next friend of Timothy Delk	14V400000
145.	Valeria Delk	14V400000
146.	Alternetta Dunbar	14V400000
147.	Lynda Duncan	14V400000
148.	Jamie Dunson	14V394000
149.	Darryl R Gaston, Jr.	
150.	Dan Ghesquiere	14V355000
151.	Lisa Goad, individually, and as representative of the estate of Justin Wayne Goad	14V400000
152.	Simon Gonzales	14V400000
153.	Christopher Garcia	14V355000
154.	Jennie Hicks, individually, and as representative of the estate of Alphonso Hicks	14V355000
155.	Tanya Howard	14V400000
156.	Melody Hughes	14V400000
157.	Mary Jackson	14V400000
158.	Margaret Johnson, individually and as next friend of Bryan Johnson, individually, and as representative of the estate of Robert Brian Johnson	14V400000
159.	Michael Kavanaugh, individually, and as representative of the estate of Norman Kavanaugh	14V355000
160.	Patricia Kersey, individually, and as representative of the estate of Carl Beale	14V400000
161.	Michael Knight	14V400000
162.	Richard Korona	14V400000
163.	Linda Kunc	14V400000
164.	Cheryl Lesesne	14V394000
165.	Shirley Lester	14V355000
166.	Tony Lett Sr., individually, and as representative of the estate of Tony Lett	14V400000
167.	Margaret Maloney	14V400000
168.	Tammie Marshall	14V400000
169.	Yvette Myles	14V400000
170.	Robert A. Noffke	14V400000
171.	Mary O'Shields, individually, and as representative of the estate of Brenda Inman	14V400000
172.	Janice Ownes	14V400000

173.	Cordelia Perry	14V400000
174.	Kyomi Postley	14V400000
175.	Kyomi Postley, individually and as next friend of Tiffany Postley	14V400000
176.	Kyomi Postley, individually and as next friend of Timothy Postley	14V400000
177.	Martinique Powell	14V400000
178.	Ryan Powell	14V400000
179.	Amber Powledge Colvin, individually, and as representative of the estate of Adam Powledge	14V400000
180.	Austin Powledge, individually, and as representative of the estate of Adam Powledge	14V400000
181.	Mary Powledge, individually, and as representative of the estate of Adam Powledge	14V400000
182.	Ronnie Powledge, individually, and as representative of the estate of Adam Powledge	14V400000
183.	Vernice Prewitt	14V400000
184.	Anna Purdy	14V400000
185.	Muntaha Ramadi	14V400000
186.	Joyce Ramsey	14V400000
187.	Dennis Rogers, individually, and as representative of the estate of Sarah Rogers	14V400000
188.	Timothy Rogers	14V355000
189.	Chikoa Russell	14V400000
190.	Randy Scott	14V400000
191.	Marilyn Secord	14V400000
192.	Yolanda Short-Coleman	14V400000
193.	Derrius Sims	14V394000
194.	Kenneth Small	14V400000
195.	Adam Sowers	14V394000
196.	Ricky Washington	14V400000
197.	Herbert Wilkinson, individually, and as representative of the estate of Jimmy Wilkinson	14V400000

**Pre-Closing Accident Plaintiffs Represented by Andrews Myers Group**

	<b>Last name</b>	<b>First name</b>	<b>Actual Date of Injury</b>
1.	Aguilar	Angel	02/28-29/2008
2.	Allen	Carl	02/01/2008
3.	Alvarado	Angelica	04/07/2007
4.	Amaya	Anthony	06/28/2009
5.	Amaya	Brandon	06/28/2009
6.	Amaya	Rosalie	06/28/2009
7.	Anderson	Cindy	02/14/2003
8.	Anderson	Jeanne	03/25/2003
9.	Andrew	Curtis	03/15/2009
10.	Ashford	Karl	07/26/2006
11.	Ator	Carole	05/09/2008
12.	Bachelder	Jeannine	07/23/2007
13.	Badalucco	Anthony	07/22/2004
14.	Barton	James	08/19/2008
15.	Baylous	Marquessia	08/25/2007
16.	Bazinette	Carolyn	08/15/2005
17.	Beaty	Robert	05/01/2009
18.	Bednar	Jared	01/09/2008
19.	Bennett	Erick	07/04/2008
20.	Bennett	Mary	02/26/2006
21.	Bhandari	Sunita	07/03/2008
22.	Birkheimer	LeAnn	07/09/2006
23.	Black	Benita	06/21/2007
24.	Bleicken	Eric	04/26/2008
25.	Bloedow	Barbara	07/14/2007
26.	Boggs	Alvin	01/14/2007
27.	Bonds	Ashanti	02/28/2009
28.	Booth	Cody	06/02/2009
29.	Botello	David	04/07/2007
30.	Boyle	James	05/12/2009
31.	Bradfield	Annette	12/25/2006
32.	Bradley	Cynthia	11/23/2006
33.	Brown	Bertha	04/17/2009
34.	Brown	Chante	12/19/2007
35.	Brown	Jovan	10/03/2007
36.	Brown	Samantha	02/01/2009
37.	Burke	Christina	03/09/2009
38.	Burley	William	12/19/2008
39.	Carrisales	Patrick	11/25/2003
40.	Celestine	Glory	12/31/2005
41.	Champagne (Decd.)	Dustin	5/25/2007

42.	Charly	Sallie	03/25/2009
43.	Clark	Teresse	10/17/2005
44.	Clem	Paul	05/08/2006
45.	Cochran	Kim	02/11/2005
46.	Coleman	Anthony	07/11/2009
47.	Collins	Daryl	12/09/2007
48.	Comens	Pamela	Dec-07
49.	Cook	Reina	12/29/2006
50.	Coviello	Rebecca	04/09/2008
51.	Cuesta	James	03/13/2005
52.	Curry	Derek	08/05/2005
53.	Cyr	Elizabeth	05/03/2007
54.	Dalsass	Donna	02/11/2007
55.	Dardano	Joanne	12/12/2008
56.	Davis	Tajanae	04/27/2007
57.	Davis	Terry	08/19/2003
58.	Davis	Tiffany	08/15/2004
59.	Delasso	Seiarra	01/23/2009
60.	Delp	Amanda	05/27/2008
61.	Dent	Anthony	12/11/2008
62.	Dent	Nell	12/30/2005
63.	Dinar	Joseph	10/24/2003
64.	DiSchiavi	Mario	12/10/2008
65.	Dixon	Ashley	01/10/2007
66.	Doll	Lyndsey	11/30/2008
67.	Donato	Joann	07/18/2005
68.	Dorsey	Alonda	07/06/2009
69.	Dorsey-Foster	Amanda	07/06/2009
70.	Dullen	Ryan	2004
71.	Dziedzic	Tommy	12/21/2005
72.	Earnest	Crystal	04/22/2005
73.	Earnest	Gregory	04/22/2005
74.	Earnest	Jessie	04/22/2005
75.	Earnest	Tyler	04/22/2005
76.	Edwards	Andre	03/07/2007
77.	Edwards	Franklin	09/16/2005
78.	El-cheikh	Sheryl	09/10/2001
79.	Enders	Kathryn	09/25/2008
80.	Eubank	Betty	08/09/2007
81.	Evans	Daniel	10/04/2002
82.	Fallon	Patrick	10/30/2001
83.	Farley	Wanda	02/02/2009
84.	Farrar	Julius	03/09/2004



85.	Faugno	Nicole	Jul-06
86.	Fedoris	Joe	09/15/2007
87.	Fischer	Darrin	05/26/2003
88.	Fitzpatrick	Aliza	10/30/2004
89.	Floyd	Rayland	02/02/2009
90.	Fonseca	Nina	02/07/2006
91.	Forbes	Andre	05/23/2004
92.	Forrest	Janice	06/07/2007
93.	Frazier	Brenda	06/25/2007
94.	Frimel	Carol	08/27/2007
95.	Fritze (Decd.)	Dean	01/04/2009
96.	Fritze (Decd.)	Minerva	01/04/2009
97.	Geisleman	Laura	10/15/2007
98.	Gentry	Rodney	01/31/2008
99.	Gibson	Demetria	02/25/2008
100.	Gilliam	Edward	11/24/2008
101.	Gillis	Michael	10/23/2007
102.	Glasper	Dandra	02/12/2006
103.	Glenn	Rodney	05/30/2009
104.	Gless	Todd	07/07/2006
105.	Godwin, Jr.	James	07/17/2009
106.	Gonzalez	Jesus	03/04/2005
107.	Goodman	Nancy	07/01/2009
108.	Gottshall	Sonia	09/21/2007
109.	Grant	Chas	08/26/2006
110.	Green	Chasity	04/09/2006
111.	Green	Sederick	05/27/2008
112.	Green	Thomas	06/05/2006
113.	Hackbarth	Brant	12/14/2003
114.	Hadley	Melissa	01/29/2009
115.	Hair	Danisha	05/27/2007
116.	Hale	Howard	02/13/2009
117.	Hamm	Loretta	06/09/2001
118.	Hamrick	Sharlie	03/11/2006
119.	Harvey	Steven	05/28/2008
120.	Hauser	Ryan	01/28/2009
121.	Haynes	Robin	2008
122.	Healy	William	05/16/2009
123.	Henderson	Bonnie	02/05/2009
124.	Henzel	Jessica	10/09/2005
125.	Hernandez	Aida	06/08/2007
126.	Hernandez	Rosalia	06/16/2009
127.	Hester	Reginald	05/22/2005

128.	Hester	Rosie	05/22/2005
129.	Hester	Terri	05/22/2005
130.	Higgins	Shatora	03/05/2005
131.	Hightower	Tracy	11/24/2008
132.	Hill	Adam	10/13/2005
133.	Hill	David	07/20/2008
134.	Hillin	Misty	08/08/2008
135.	Hiney	Christine	09/11/2007
136.	Holcomb	Supreina	05/27/2007
137.	Holub	Jessica	2009
138.	Hosfelt	Helene	04/28/1999
139.	Hutchings	Kevin	01/05/2006
140.	Hvizda	Paulette	06/10/2009
141.	Jackson	Christine	09/01/2005
142.	James	Amber	08/10/2007
143.	Jankauskas	Roseanne	02/02/2009
144.	Jaskula	Joseph	11/21/2007
145.	Jimenez (Decd.)	Jordan	01/23/2007
146.	Johnson	Kevin	01/22/2008
147.	Johnson	LaShauna	04/27/2007
148.	Johnson	Shanga	07/06/2009
149.	Jones	Antoinette	06/15/2008
150.	Jones	Jimmy	11/12/2007
151.	Jones	Precila	06/28/2000
152.	Josey	Barbara	02/27/2008
153.	Kasey	Dallas	11/06/2004
154.	Kearney	LaToya	05/27/2008
155.	Kilbourne	Mary Ann	07/06/2007
156.	King	Dominique	08/17/2001
157.	King	Jeanette	08/17/2001
158.	King	Keith	11/12/1999
159.	Kletzien	Emily	03/04/2005
160.	Knight	Justin	10/07/2006
161.	Konz	Susan (for dec. David Konz)	05/20/2002
162.	LaDow	Charles	01/01/2004
163.	LaFevor	Kimberly	10/23/2008
164.	Landry	Eugene	04/10/2006
165.	Lasley	Julie	08/29/2006
166.	Lavergne	Keisha	08/18/2007
167.	Lawrimore	Gina	09/13/2012
168.	Lefever	Troy	08/15/2005
169.	Lehman	Sylvia	08/04/2006
170.	Lewis	Gloria	02/01/2002

171.	Limon	Juan Carlos	05/04/2008
172.	Linden	Michael	05/09/2006
173.	Little	Amelia	12/05/2006
174.	Little	Leawaiia	08/12/2008
175.	Lonzo	Calvin	08/02/2005
176.	Lynch	Melinda	11/24/2002
177.	MacLaren	Nathan	05/15/2009
178.	Magee	Juahem	08/25/2007
179.	Manuel-Collins	Yolanda	12/09/2007
180.	Marquiss	Amy	05/24/2008
181.	Martinez	Louella	03/15/2008
182.	Masternak	Becky	10/12/2004
183.	Mastrich	Debra	12/01/2001
184.	Mathis	Steve	11/14/2007
185.	Mayr	Mark	03/08/2009
186.	Mayrant	Tyisha	01/16/2009
187.	Mays	Joshua	01/04/2007
188.	McBrayer	Anthony	11/11/2006
189.	McCarthy	Shawn	06/07/2009
190.	McCarthy (Decd.)	Cory	10/07/2008
191.	McCluney	Demetria	03/20/2007
192.	McClure	Katrina	11/15/2008
193.	McDonough	John	03/03/1998
194.	McGhee	Gina	01/03/2009
195.	McLeod	Jacoby	01/20/2000
196.	McLeod	Scott	01/20/2000
197.	McMillin	Juliet	11/14/2007
198.	Merritt	Ruby	03/19/2008
199.	Mikeska	Christopher	12/17/2007
200.	Milam	Mark	02/27/2008
201.	Miles	Lisa	02/28/2009
202.	Miller	Ariel	09/06/2008
203.	Miller	Grace	03/29/2008
204.	Miller	Jessie	08/26/2006
205.	Miller	Star	10/21/2007
206.	Monroe	Jerry	09/20/2001
207.	Moore	Wilbur	11/12/2007
208.	Morales	Jason	09/29/2006
209.	Morgan	Glenda	12/11/2008
210.	Morris	Lillian	06/10/2009
211.	Morris	Sonya	06/20/2001
212.	Morrison	Sheryl	05/07/2008
213.	Mortin	Phillip	07/16/2008

214.	Mungo	Ernest	12/07/2007
215.	Murray	Shirley	07/02/2004
216.	Murry	Kienda	05/20/2009
217.	Myers	Rachel	07/23/2005
218.	Nash	Jenifer	04/01/2007
219.	New	Michael	01/29/2009
220.	Nichols	Michael	06/12/2006
221.	Norwood	Dijionay	08/25/2007
222.	Norwood	Sumer	08/25/2007
223.	Olufs	Courtney	09/25/2008
224.	Olufs	Joshua	09/25/2008
225.	Owens, Sr.	Perry	08/17/2001
226.	Parker	Andy	05/21/2004
227.	Parker	Randy	Fall 2008
228.	Patrick	Mary	12/11/2004
229.	Patterson	Richard	06/10/2009
230.	Perkins	Crystal	09/16/2008
231.	Perlstone	Paul	03/30/2007
232.	Perrino	Alyssa	02/16/2007
233.	Perrino	Joseph	02/16/2007
234.	Perrino	Kathleen	02/16/2007
235.	Perymon	Sinator	09/01/2000
236.	Peters	Merle	01/06/2009
237.	Phillips	Ami	05/24/2009
238.	Pier	David	01/16/2005
239.	Pope	Twanna	10/25/2001
240.	Portale	Phil	08/20/2007
241.	Prayleau	Priscella	01/16/2009
242.	Pruski	Alexander	10/13/2007
243.	Ramirez	Melissa	12/20/2007
244.	Randolph	Annie	08/09/2007
245.	Reed	Joy	09/23/2008
246.	Reeves	Curtis	06/09/2002
247.	Renckert	Michael	10/27/2006
248.	Rhoades	Brigette	03/14/2007
249.	Rhodes	Marian	11/14/2007
250.	Rhyner	Allen	03/04/2005
251.	Richardson	Jerry	07/08/2009
252.	Richardson	Steve	07/02/2004
253.	Riley	Jibreel	06/18/2007
254.	Rivers	Antonio	03/28/2005
255.	Roberts	Valare	03/23/2007
256.	Robinson	Diane	06/19/2008

257.	Robinson	Laquinda	06/28/2009
258.	Rodney	Van	02/05/2009
259.	Rogers	Kevin	02/13/2008
260.	Rolfes	Todd	02/28/2009
261.	Rozier	Kevin	02/24/2008
262.	Rubino	Gary	06/04/2009
263.	Rutledge	Raeann	01/18/2005
264.	Sachs	Andrea	08/01/2008
265.	Salazar	Ontonio	03/05/2008
266.	Samuels	Sandra	03/19/2008
267.	Sanchez	Alejandro	10/13/2007
268.	Sandel	Kelly	04/25/2009
269.	Sanders	Felicia	01/14/2009
270.	Sanderson	Sheila	04/14/2005
271.	Sasser	Stephanie	11/02/2008
272.	Sauseda	Michael	12/08/2008
273.	Scherer	Claudette	05/14/2006
274.	Schnieter	Marianne	11/26/2007
275.	Schultz	Brenda	Fall 2008
276.	Selby	Mathew	05/13/2009
277.	Shaffer (Decd.)	Lloyd	02/14/2009
278.	Shaffer	Maurice	02/14/2009
279.	Sharon	Debra	08/16/2008
280.	Shaw	Tony	01/28/2006
281.	Sherman	Chelsea	05/21/2006
282.	Sherman	Emily	05/21/2006
283.	Silk-Miller	Colleen	07/04/2007
284.	Sills	Jerome	11/22/2004
285.	Simecek	Dawn	11/02/2007
286.	Simmonds	Alner	07/02/2004
287.	Simmons	David	03/07/2006
288.	Simpson	Lynette	01/02/2009
289.	Sims	Charles Arthur	05/08/2005
290.	Sims	Janice	06/01/2001
291.	Singleton	Beulah	01/13/2007
292.	Singleton	Billy	01/13/2007
293.	Sinnett	Kasie	03/28/2004
294.	Sinnokrot	Mamoon	12/02/2005
295.	Slade	Austin	03/29/2006
296.	Smart	Kayla	10/01/2005
297.	Smith	Denise	07/21/2007
298.	Smith	Mark	02/13/2009
299.	Smith	Mildred	04/05/2008

300.	Smith	Monica	07/20/2002
301.	Smith	Ruth	08/16/2006
302.	Smith	Steve	04/23/2005
303.	Speed	Kimberly	06/18/2009
304.	Stafford (Decd.)	Theodore	02/25/2007
305.	Starlin	Marvella	01/18/2006
306.	Stephenson	Shakiria	2007
307.	Stewart	Annette	08/20/2007
308.	Stiens	Karen	03/01/2008
309.	Tate	Rasheed	07/12/2002
310.	Taylor	Mike	12/27/2000
311.	Tenner	Tiffany	04/11/2008
312.	Thomas	Ashley	04/13/2009
313.	Thomas	Mary	02/11/2009
314.	Thompson-Warren	Kesha	06/02/2007
315.	Tilley	Joan	07/08/2008
316.	Tipton	Kristina	09/12/2007
317.	Tittle	James	05/29/2009
318.	Tollefson	Mary Ann	10/15/2007
319.	Tooley	Camille	01/10/2009
320.	Tousoulis	Denise	05/25/2009
321.	Tousoulis	John	05/25/2009
322.	Tyler	Lora	09/15/2004
323.	Tyler	Theresa	Summer 2008
324.	Valcarce-Stuart	Rosaura	05/20/2008
325.	Vines	Sarah	10/19/2003
326.	Wagley	Kelly	02/26/2008
327.	Walker	Thomas	07/05/2009
328.	Washington	George	02/08/2008
329.	Wells	Fredrick	03/18/2008
330.	Werth	Regina	04/18/2007
331.	Whalen	Pam	02/13/2006
332.	Whatley	Susan	05/29/2009
333.	Wheeler	Meghan	03/13/2009
334.	Wheeler	Vickie	06/14/2007
335.	Whitfield	Rose	12/25/2007
336.	Wiesjahn (Decd.)	Rachel	08/28/2008
337.	Wilkins	Damion	12/05/2006
338.	Wilkins	Rolando	12/05/2006
339.	Williams	Brittany	06/07/2009
340.	Williams	Claudia	06/07/2009
341.	Wilson	Jazmin	030/3/2009
342.	Wisniewski	Edward	10/22/2007

343.	Wooten	William	05/19/2009
344.	Worsham	John	08/25/2005
345.	Wrigley	Joyce	07/31/2008
346.	Writt	James	03/28/2009
347.	Wyatt	Lisa	12/19/2008
348.	Young	Ashley	04/03/2008
349.	Youngbear	James	07/29/2007
350.	Zayas	Ricardo	05/26/2007
351.	Zayas	Victor	05/26/2007
352.	Zimmer	Katherine	08/06/2005

Schedule 3



## Exhibit A

1. Michael Amezquita
2. Lisa Axelrod
3. Patricia Barker
4. Grace Belford
5. Michael and Sylvia Benton
6. William Bernick
7. Stacey Bowens
8. Camille Burns
9. Stephanie Renee Carden
10. David Cleland
11. Diana Cnossen
12. Lorraine De Vargas
13. Mary Dias
14. James Dooley
15. Jennifer Dunn
16. Colin Elliott
17. Paulette Hand
18. Crystal Hardin
19. Shenyesa Henry
20. Heather Holleman
21. Laurie Holzwarth
22. Annette Hopkins
23. Frances Howard
24. Yvonne James-Bivins
25. Sandra Levine
26. Wandell Littles Beazer
27. Melody Lombardo
28. Sophia Marks

**Exhibit A**

29. George Mathis
30. Keith Nathan
31. Georgianna Parisi
32. Michael Pesce
33. David Price
34. Esperanza Ramirez
35. Kenneth Robinson
36. Bernadette Romero
37. Michael Rooney
38. Maria E. Santiago
39. Catherine Senkle
40. Lisa Simmons
41. Gerald Smith
42. Jacqueline Smith
43. Marion Smoke
44. Malinda Stafford
45. Bonnie Taylor
46. Lisa Teicher
47. Annet Tivin
48. Blair Tomlinson, D.D.S.
49. Susan Viens
50. Verlana Walker
51. Bryan Wallace
52. Dennis Walther
53. Ray Wieters
54. Neysa Williams
55. Lyle Wirtjes
56. Patrice Witherspoon
57. Wayne Wittenberg

**Exhibit A**

58. Robert Wyman

59. Philip Zivnuska, D.D.S

# **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	)	
	)	Chapter 11
	)	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	)	Bankruptcy Case No.: 09-50026 (MG)
f/k/a General Motors Corporation, <i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

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**ORDER APPROVING (I) THE GUC TRUST ADMINISTRATOR’S ACTIONS AND (II) THE SETTLEMENT AGREEMENT BY AND AMONG THE GUC TRUST AND THE SIGNATORY PLAINTIFFS PURSUANT TO SECTIONS 105, 363 AND 1142 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 3002 AND 9019 AND (III) AUTHORIZING THE REALLOCATION OF GUC TRUST ASSETS**

Upon the *Motion Pursuant to Bankruptcy Code Sections 105, 363, and 1142 and Bankruptcy Rules 3002 and 9019 to Approve (i) the GUC Trust Administrator’s Actions and (ii) the Settlement Agreement By and Among the Signatory Plaintiffs and the GUC Trust and to (iii) Authorize the Reallocation of GUC Trust Assets* filed on May 3, 2018 [ECF No. \_\_\_\_] (the “**Motion**”) seeking entry of, *inter alia*, an order approving (i) the GUC Trust Administrator’s<sup>1</sup> actions as set forth in the settlement agreement and (ii) the settlement agreement attached to the Motion as Exhibit 1 (the “**Settlement Agreement**”) and (iii) authorizing the reallocation of GUC Trust Assets; and the Bankruptcy Court having considered the Motion; and a hearing on the Motion having been held before this Court on \_\_\_\_\_, 2018 (the “**Hearing**”) to consider the relief requested in the Motion; and the Bankruptcy Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Plan; and the Bankruptcy Court having considered the statements of counsel on the record of the Hearing and the filings of the parties in connection with the Motion; and it appearing that this is a core

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement dated April 25, 2018, by and between the GUC Trust and Signatory Plaintiffs.

proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon the record of the Hearing; and it appearing that proper and adequate notice of the Motion has been given in accordance with the *Order: (1) Granting Authority to Reallocate and Use Distributable Cash for Notice Procedures, (2) Approving Notice Procedures with Respect to Proposed Settlement and (3) Directing The Production Of Information Held By General Motors LLC Pursuant To Federal Rule Of Bankruptcy Procedure 2004 And Bankruptcy Code Section 105(a)* [ECF No. \_\_\_\_] (the “**Notice Order**”) and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor,

**THE BANKRUPTCY COURT HEREBY FINDS AND DETERMINES THAT:<sup>2</sup>**

- A. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).
- B. The statutory predicates for the relief requested in the Motion are Sections 105, 363, and 1142 of the Bankruptcy Code and Bankruptcy Rules 3002 and 9019.
- C. The Bankruptcy Court takes judicial notice of the docket of the Bankruptcy Cases maintained by the Clerk of the Bankruptcy Court or its duly appointed agent, including, but not limited to, all pleadings and other documents filed, all orders entered and all evidence and arguments made, proffered, adduced and/or presented at the various hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases as they related to the Sale, Bar Date, Plan, or Recalls.
- D. As evidenced by the affidavits of service filed with this Court, and in accordance with the Notice Order, notice has been given and a reasonable opportunity to object or be heard

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<sup>2</sup> The findings and conclusions set forth herein constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

with respect to the Motion and the relief requested therein has been afforded to (i) all persons in the United States who, prior to July 10, 2009, owned or leased a vehicle manufactured by Old GM included in the Recalls; (ii) all Pre-Closing Accident Plaintiffs who have filed a lawsuit against New GM as of the date of the Settlement Agreement; (iii) all Plaintiffs who have filed or joined a motion for authority to file late claims against the GUC Trust; (iv) holders of units of beneficial interest in the GUC Trust; (v) the defendants to the Term Loan Avoidance Action; and (vi) the parties in interest in accordance with the *Sixth Amended Order Pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rules 1015(c) and 9007 Establishing Notice and Case Management Procedures*, dated May 5, 2011 [ECF No. 10183]. Additional publication notice of the Motion has been given by the GUC Trust as set forth in the Notice Order. The notice was good, sufficient and appropriate in light of the circumstances and the nature of the relief requested, and no other or further notice is or shall be required.

E. The GUC Trust has demonstrated good, sufficient and sound business purposes, causes and justifications for the relief requested in the Motion and the approval of the Settlement Agreement and the transactions contemplated thereby.

F. The GUC Trust has demonstrated that the relief requested in the Motion is necessary for the prompt and efficient administration of the Old GM Bankruptcy Case and is in the best interests of the GUC Trust, its beneficiaries and other parties-in-interest.

G. The Settlement Agreement was negotiated and entered into by and among the Parties in good faith and from arm's-length bargaining positions.

H. The GUC Trust has demonstrated that continued litigation of the matters resolved by the Settlement Agreement would be complex, costly and delay the closing of the Old GM Bankruptcy Case and the distribution of GUC Trust Assets in accordance with the Plan.

I. The Settlement Agreement resolves multiple disputes, claims and issues to which the Parties are involved in varying degrees, and in related but not necessarily identical ways, such that each Party's overall obligations to one or more other Parties constitutes good and sufficient consideration for the overall benefits each Party is to receive from one or more of the other Parties.

J. The settlements, compromises, releases and transfers contemplated in the Settlement Agreement are fair, reasonable and given in exchange for valuable and reasonably equivalent consideration.

K. The GUC Trust's entry into the Settlement Agreement, including the compromises and releases embodied therein, is a prudent and reasonable exercise of business judgment that is in the best interests of the GUC Trust and its beneficiaries.

L. The Settlement Agreement represents a multi-party resolution of a number of complex factual and legal issues, and the releases and acknowledgments contained therein and herein, and the injunction and findings provided by this Order, are a necessary element of the consideration received by the Parties, and a condition to the effectiveness of the Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The relief requested by the Motion is GRANTED and the Settlement Agreement and each of its terms are approved in their entirety as set forth herein.

2. The actions to be taken by the GUC Trust Administrator pursuant to the terms of the Settlement Agreement, including (i) the filing of an estimation motion seeking an estimate of Recall claims that could exceed \$10 billion and (ii) the reallocation of \$15 million of Distributable Assets are hereby approved pursuant to Sections 8.01(e) and 6.1 of the GUC Trust Agreement.



3. The GUC Trust Administrator is authorized to perform all of its obligations pursuant to the terms of the Settlement Agreement, and to take any and all actions necessary or appropriate to effectuate the Settlement Agreement and to enforce its terms.

4. Any and all objections to the Motion that have not been withdrawn, resolved, waived or settled are overruled on the merits.

5. In accordance with Paragraph 3.1 of the Settlement Agreement, the Settlement shall be effective and binding on all persons upon the Settlement Effective Date, including, but not limited to, all Plaintiffs, any past or present holder of units of beneficial interests in the GUC Trust, any past or present holder of an Allowed General Unsecured Claim, and all defendants in the Term Loan Avoidance Action.

6. On or before the date that is five (5) business days following the Settlement Effective Date (the “**Cash Distribution Date**”), in full settlement of the Parties’ disputes as contemplated in the Settlement Agreement, and in contemplation of, among other things, the releases and waivers set forth in Paragraph 2.4 of the Settlement Agreement and Paragraph 6 hereof, the GUC Trust is hereby directed to pay the total sum of fifteen million U.S. Dollars (USD \$15,000,000) to an account established and designated by the Signatory Plaintiffs; provided that, in the event that Signatory Plaintiffs have not established and designated such Settlement Fund within two (2) business days following the Settlement Effective Date, the GUC Trust shall place the Settlement Amount into a third party escrow account established by the GUC Trust.

7. Upon the occurrence of the Settlement Effective Date, all Plaintiffs, for themselves, and on behalf of their respective agents, employees, officers, directors, shareholders, successors, assigns, assignors, predecessors, members, beneficiaries, representatives (in their

capacity as such) and any subsidiary or affiliate thereof, (the “**Releasing Parties**”), shall be deemed to completely, unconditionally and irrevocably release, waive (including a waiver under California Civil Code Section 1542) and forever waiver, discharge and release the GUC Trust, the GUC Trust Administrator, the GUC Trust Monitor, the Motors Liquidation Company Avoidance Action Trust, and the holders of beneficial units in the GUC Trust, and all of their subsidiaries and affiliates, and all of their respective past, present and future agents, attorneys, employees, officers, directors, shareholders, successors, assigns, members, representatives (in their capacity as such) (the “**Released Parties**”), from any and all, actions, obligations, suits, damages, attorneys’ fees, charges, claims (including but not limited to General Unsecured Claims and claims for injunctive and/or declaratory relief), costs, demands, expenses, judgments, liabilities and causes of action of any kind, nature or description, whether matured or unmatured, contingent or absolute, liquidated or unliquidated, known or unknown, foreseen or unforeseen, direct or derivative, preliminary or final, which the Releasing Parties may now have, ever had, or may in the future have against the Released Parties, the GUC Trust Assets, the Debtors, or their estates, arising out of or based on any facts, circumstances, issues, services, advice, or the like, occurring from the beginning of time through the date hereof that relate to, could relate to, arise under, or concern the Recalls, the Old GM Bankruptcy Case, the GM MDL, the Plan, the Late Claims Motions, the AMPSA, the Sale Order or any matter associated with any of the foregoing (collectively, the “**Released Claims**”); provided, however, that the Releasing Parties shall retain all remedies available in law or equity for breach of the Settlement Agreement by the GUC Trust; and provided further that solely in the event that the Bankruptcy Court enters the Claims Estimate Order as contemplated by the Settlement Agreement, the foregoing Release and Waiver shall not apply to the Adjustment Shares, which shall be issued by New GM to the Settlement

Fund for the exclusive benefit of Plaintiffs pursuant to the terms of the entered Claims Estimate Order (if any); and provided further that, nothing in the Settlement Agreement, Motion or this Order is intended to waive any claims against New GM or be an election of remedies against New GM; nor does the Settlement Agreement, Motion or this Order, or any payments made in connection therewith, represent full satisfaction of any claims against Old GM, unless and until such claims are in fact paid in full for every available source (provided, however, that in no event shall any Plaintiff be permitted to seek any further payment or compensation from the GUC Trust in respect of their claims or otherwise, other than the Settlement Amount and the Adjustment Shares) and, except as mandated otherwise by applicable law, nothing in the Settlement Agreement, Motion or this Order shall waive or impair any claims that Plaintiffs may have against New GM, the Settlement shall not be an election of remedies by any Plaintiff, and the Settlement Fund shall not represent full and final satisfaction of any claims that Plaintiffs may have against New GM, which claims are expressly reserved. Nor shall the Settlement or any estimation or payment or distribution made in connection therewith constitute a cap on any claims by any of the Plaintiffs against New GM. In addition, the Releasing Parties shall be deemed to have agreed not to make any claim, commence or continue any action, lawsuit, adversary proceeding or other legal, equitable or administrative proceeding that asserts any such Released Claims against the Released Parties, the GUC Trust Assets, the Debtors, or their estates, or to seek any further funding from the Released Parties in connection with the Released Claims, and the Released Parties are released and discharged of any further obligation to provide such funding, it being the intent of the Parties that (other than the rights of the Plaintiffs to the Adjustment Shares following entry of the Claims Estimate Order) the payment of the Settlement

Amount is the last and only payment the Released Parties or any of their subsidiaries or affiliates will make to the Plaintiffs in connection with the Released Claims.

8. The Releasing Parties shall be permanently stayed, restrained, enjoined and forever barred from taking any action against any of the Released Parties, the GUC Trust Assets, or Old GM's estates for the purpose of, directly or indirectly, collecting, recovering, or receiving payment or recovery with respect to, relating to, arising out of, or in any way connected with any Released Claim, whenever and wherever arising or asserted, all of which shall be resolved and satisfied by the Settlement Fund.

9. The Released Parties: (a) shall have no liability whatsoever to any holder or purported holder of a claim, equity interest or unit of beneficial interest in the GUC Trust, or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of, the settlement of the claims addressed by the Settlement Agreement, or the pursuit of approval of the Settlement Agreement or the Claims Estimate Order, the administration of the Settlement Agreement, or any transaction contemplated by the Settlement Agreement, or in furtherance thereof, or any obligations that they have under or in connection with the Settlement Agreement or the transactions contemplated by the Settlement Agreement (collectively, the "**Exculpated Claims**"), except (i) for any act or omission that constitutes willful misconduct or gross negligence as determined by a final order, and (ii) for any contractual obligation that is owed to a Party under the Settlement Agreement or this Order; and (b) in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Settlement Agreement. No holder of any claim, interest or unit of beneficial interest in the GUC Trust, or other party-in-interest, none of their respective agents,

employees, representatives, financial advisors, attorneys, or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Released Parties or the GUC Trust Monitor with respect to the Exculpated Claims. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Released Parties from liability.

10. All of the value of the Settlement Fund, including the Settlement Amount (and, if issued pursuant to the Claims Estimate Order, the Adjustment Shares or their value), shall be reserved for the exclusive benefit of the Plaintiffs, subject only to tax obligations or costs associated with the administration of the Settlement Fund.

11. Upon the Settlement Effective Date, the GUC Trust, the GUC Trust Administrator, the GUC Trust Monitor, all holders of beneficial units of the GUC Trust, all defendants in the Term Loan Avoidance Action, for themselves, and on behalf of their respective agents, employees, officers, directors, shareholders, successors, assigns, assignors, predecessors, members, beneficiaries, representatives (in their capacity as such) and any subsidiary or affiliate thereof (the “**GUC Releasing Parties**”), shall be deemed to completely and irrevocably release and waive any and all rights or interests they may now have, ever had, or may in the future have with respect to the Settlement Amount. In addition, the GUC Releasing Parties shall be deemed to have agreed not to make any claim, commence or continue any action, lawsuit, adversary proceeding or other legal, equitable or administrative proceeding that seeks to share in or recover from the Settlement Amount. Further, the GUC Releasing Parties shall be enjoined and forever barred from directly or indirectly bringing, commencing, initiating, instituting, maintaining, prosecuting or otherwise aiding, in any action of any kind or nature, whether in the United States, Canada or elsewhere, that seeks to share in or recover from the Settlement Amount.

12. Limited only by the tax provisions in the Settlement Agreement, upon the Settlement Effective Date, the GUC Releasing Parties shall be deemed to completely and irrevocably release and waive any and all rights or interests they may now have, ever had, or may in the future have with respect to the Adjustment Shares, which shall be issued by New GM to the Settlement Fund for the exclusive benefit of Plaintiffs pursuant to the terms of the entered Claims Estimate Order (if any). In addition, the GUC Releasing Parties shall be deemed to have agreed not to make any claim, commence or continue any action, lawsuit, adversary proceeding or other legal, equitable or administrative proceeding that seeks to share in or recover from the Adjustment Shares. Further, the GUC Releasing Parties shall be enjoined and forever barred from directly or indirectly bringing, commencing, initiating, instituting, maintaining, prosecuting or otherwise aiding, in any action of any kind or nature, whether in the United States, Canada or elsewhere, that seeks to share in or recover from the Adjustment Shares.

13. For the avoidance of doubt, this Order shall not be affected by the entry or non-entry of any Claims Estimate Order, or any subsequent reversal of any Claims Estimate Order on appeal or on remand.

14. The failure to specifically describe or include any particular provision of the Settlement Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Settlement Agreement be authorized and approved in its entirety.

15. If there is any conflict between the terms of the Motion and the Settlement Agreement, the terms of the Settlement Agreement shall control, and if there is any conflict between the terms of this Order and the Settlement Agreement, the terms of this Order shall control.

16. Notwithstanding the possible applicability of Bankruptcy Rules 3002, 6004, 6006, 7062, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

17. The Bankruptcy Court shall have exclusive jurisdiction to interpret and enforce the Settlement Agreement and to resolve any disputes relating to or concerning the Settlement Agreement.

Dated: \_\_\_\_\_, 2018

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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

**DECLARATION OF DAVID A. VANASKEY JR. IN SUPPORT OF: (1) THE MOTION OF MOTORS LIQUIDATION COMPANY GUC TRUST TO APPROVE THE SETTLEMENT AGREEMENT BY AND AMONG THE SIGNATORY PLAINTIFFS AND THE GUC TRUST PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 363, AND 1142 AND BANKRUPTCY RULES 3020 AND 9019; AND (2) THE MOTION OF MOTORS LIQUIDATION COMPANY GUC TRUST TO ESTIMATE VEHICLE RECALL ECONOMIC LOSS AND PERSONAL INJURY CLAIMS FOR ALLOWANCE PURPOSES AND TO ESTABLISH A SCHEDULE FOR THE CLAIMS ESTIMATION PROCEEDING**

I, David A. Vanaskey Jr. declare:

1. I am a Vice President of Wilmington Trust Company (“WTC”), located at Rodney Square North, 1110 North Market Street, Wilmington, Delaware, 19890-1615, and am duly authorized to submit this declaration (the “**Declaration**”) on behalf of WTC in its capacity as trustee for and administrator (the “**Administrator**”) of the Motors Liquidation Company GUC Trust (the “**GUC Trust**”).<sup>1</sup>

2. I submit this Declaration in support of: (i) *Motion Of Motors Liquidation Company GUC Trust To Approve The Settlement Agreement By And Among The Signatory Plaintiffs And The GUC Trust Pursuant To Bankruptcy Code Sections 105, 363, And 1142 And Bankruptcy Rules 3002 And 9019 (the “Settlement Motion”)*; and (ii) *Motion of Motors*

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<sup>1</sup> Unless otherwise defined in this declaration, capitalized terms shall have the meanings noted in the Settlement Agreement dated April 25, 2018 or the Second Amended and Restated Motors Liquidation Company GUC Trust Agreement, dated as of July 30, 2015 (the “**GUC Trust Agreement**”) [ECF No. 13332].



*Liquidation Company GUC Trust To Estimate Vehicle Recall Economic Loss And Personal Injury Claims For Allowance Purposes And To Establish A Schedule For The Claims Estimation Proceeding* each dated May 2, 2018, and filed concurrently with this declaration.

3. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would competently testify thereto.

### **Background**

4. I am a Vice President of WTC with over 30 years of experience in its financial services group, including 25 years specializing in capital markets, defaults and corporate restructuring. In such capacity, I and the WTC teams overseen by me have directed multiple accounts and products in varying contexts, including chapter 11 reorganizations. Specifically, I have provided services in connection with the following major bankruptcy cases: (a) *In re UAL Corp.*; (b) *In re US Airways Group, Inc.*; (c) *In re Baldwin*; (d) *In re Delta Air Lines, Inc.*; (e) *In re Solutia Inc.*; (f) *In re Mesa Air Group, Inc.*; (g) *In re Circuit City Stores, Inc.*; and (h) *In re General Motors Corporation*.

5. WTC's initial role in the Old GM bankruptcy was serving as the successor Indenture Trustee for approximately \$23 billion in U.S. dollar denominated unsecured notes, bonds and debentures issued by Motors Liquidation Company, formerly known as General Motors Corporation. During the bankruptcy, WTC served as chair of the Official Committee of Unsecured Creditors of Motors Liquidation Company.

6. On March 29, 2011, the Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") entered a Confirmation Order confirming the Debtors' liquidating Plan, and appointing WTC as the Administrator. The GUC Trust is governed by a trust agreement, which has been modified in accordance with its terms several times since the entry of the Confirmation Order.

7. Prior to the Effective Date of the Plan, I served as the lead representative of WTC in its capacities as Indenture Trustee and chair of the Official Committee of Unsecured Creditors of Motors Liquidation Company. From and after the Effective Date, I served, and continue to serve, as the lead representative of WTC in its capacity as trustee for and administrator of the GUC Trust. Through such experiences, I have developed an intimate understanding of the Debtors, the Plan, the GUC Trust Agreement, and the other facts and circumstances that form the basis of this Declaration.

### **The Sale Order and the Bar Date**

8. On July 5, 2009, the Bankruptcy Court entered the *Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (III) Granting Related Relief* (Dkt. 2968) (the “**Sale Order**”). Under the Amended and Restated Master Sale and Purchase Agreement (the “**MSPA**”), the Purchaser, New GM, agreed to pay approximately \$45 billion in consideration for substantially all of the assets of the Sellers, primarily Old GM.

9. Under the MSPA, New GM agreed that if “the estimated allowed general unsecured claims against Sellers’ estates exceed \$35,000,000,000, then Purchaser will . . . issue” up to 30,000,000 of additional shares of New GM common stock (the “**Adjustment Shares**”). MSPA (Dkt. 2968-2) § 3.2(c)(i).

10. Under the MSPA, the Debtors had authority to seek an order of the Bankruptcy Court estimating the aggregate allowed general unsecured claims against Old GM’s estate (the “**Claims Estimate Order**”).

11. A September 23, 2011 letter agreement between the GUC Trust, the GUC Trust Monitor, Motors Liquidation Corporation, and New GM confirms that the GUC Trust has the sole and exclusive authority to “at any time . . . seek . . . the Claims Estimate Order” that Sellers previously had authority to seek.

12. The Bankruptcy Court set November 30, 2009 as the bar date for filing claims against Old GM (the “**Bar Date**”).

### **The GUC Trust’s Creation and Current State**

13. The GUC Trust was formed to implement the Plan. The GUC Trust is a liquidating trust with the primary purpose of resolving disputed claims and distributing GUC Trust Assets and GUC Trust Units to the GUC Trust’s defined beneficiaries (“**GUC Trust Beneficiaries,**” or “**Beneficiaries**”). GUC Trust Beneficiaries include holders of Allowed General Unsecured Claims as of March 31, 2011, holders of disputed claims as of March 31, 2011 that were later allowed, and holders of freely transferable Units in the GUC Trust.

14. The GUC Trust operates for the benefit of GUC Trust Beneficiaries and has a fiduciary duty to maximize the recoveries of the GUC Trust Beneficiaries.

15. Under the GUC Trust Agreement, the GUC Trust “shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Disputed General Unsecured Claims.” Dkt. 13332 § 5.1(d). If the amount to be Allowed exceeds \$10 million, then the GUC Trust Monitor must review and approve “[a]ny decision to settle or otherwise resolve any objections to Disputed General Unsecured Claims against the Debtors.” *Id.* § 11.3(a)(i).

16. To date, putative creditors have filed over \$40 billion in general unsecured claims, of which \$31.854 billion are Allowed General Unsecured Claims. The GUC Trust has resolved over 4,000 unsecured claims filed against Old GM.

17. As of November 2016, the GUC Trust had distributed approximately 94% of its initial assets in the form of New GM stock, warrants, and cash, to holders of allowed claims and to holders of Units. Aside from a general disputed claim contingency totaling \$14.8M, there are no remaining assets in the GUC Trust that have not already been allocated.

18. Furthermore, other than the proposed claims related to the Recalls and the contingent claim that may result from the Avoidance Action Litigation, I am not aware of any other potential claims against Old GM or the GUC Trust.

### **New GM's Recalls and Resulting Litigation**

19. In 2014, New GM recalled more than 30 million vehicles, including some that had been on the road for more than a decade. In particular, New GM recalled millions of vehicles due to a defective ignition switch as part of NHTSA Recall Number 14V-047 (the "**Ignition Switch Defect**"), millions of additional vehicles due to other defects related to similar ignition switch defects, and millions of vehicles due to defective side airbags, power steering, and other defects.

20. Hundreds of plaintiffs responded to the revelations by filing individual and putative class actions against New GM seeking damages, under various theories, for alleged economic loss, personal injury, and wrongful death.

21. In response, New GM filed motions to enforce the Sale Order's injunction on successor liability (the "**Motions to Enforce**"). In addition, New GM suggested that plaintiffs look to the GUC Trust for recovery.

22. On a stipulated record related to the Ignition Switch Defect, the Bankruptcy Court found, *inter alia*, that Old GM knew or should have known about the Ignition Switch Defect and therefore gave inadequate notice to plaintiffs, but that any claims against the GUC Trust were

nonetheless barred because of a lack of prejudice. The Bankruptcy Court also found that claims against the GUC Trust were barred by the doctrine of equitable mootness.

23. On appeal, the Second Circuit affirmed in part, reversed in part, and vacated in part. Most relevant for purposes of the settlement motion, the Second Circuit held that plaintiffs had suffered a due process violation causing prejudice and that the issue of equitable mootness was not ripe because no plaintiff had filed for permission to file late claims.

### **The Late Claims Motions**

24. Upon remand, the parties began addressing whether Recall plaintiffs could satisfy the requirements for authorization to file late proofs of claim against the GUC Trust, and whether such claims are equitably moot.

25. On December 22, 2016, counsel for certain Ignition Switch Pre-Closing Accident Plaintiffs filed a motion for authority to file late proofs of claim on behalf of 175 plaintiffs alleging personal injury and wrongful death claims arising from the Ignition Switch Defect. Separately, Designated Counsel for Ignition Switch Plaintiffs and certain Non-Ignition Switch Plaintiffs filed a motion for authority to file one late putative class proof of claim for economic losses on behalf of Ignition Switch Plaintiffs, and another for economic losses on behalf of Non-Ignition Switch Plaintiffs.

26. On January 4, 2017 counsel for the *Groman* Plaintiffs and counsel for the Peller Plaintiffs filed a joinder to the late claims motions filed by Designated Counsel. On July 28, 2017 counsel for Additional Ignition Switch Pre-Closing Accident Plaintiffs filed a motion for authority to file late proofs of claim on behalf of 171 plaintiffs alleging personal injury and wrongful death claims arising from the Ignition Switch Defect (together the “**Late Claims Motions**”).

27. Further, certain Pre-Closing Accident Plaintiffs injured or killed in crashes that occurred before July 10, 2009, involving vehicles subject to Recall Nos. 14V-355, 14V-394, 14V-400, or 14V-540 (and who are identified by name and Recall Number in Schedule 1 to the Settlement Agreement as among the Signatory Plaintiffs) have informed the GUC Trust that they intend to file a Supplemental Late Claims Motion on or before May 31, 2018, seeking allowance of their late claims based on due process violations relating to the foregoing Recalls.

28. Per the Bankruptcy Court's order, the GUC Trust received limited discovery from certain putative late claimants regarding when they knew or reasonably could have known that they potentially had claims against the GUC Trust. In addition, the parties briefed disputed questions about whether the plaintiffs would be required to show excusable neglect under *Pioneer Investment Services Co. v. Brunswick Associates Ltd.*, 507 U.S. 380 (1992), in order to obtain permission to file late claims, and the applicability of any agreements with the GUC Trust to toll the time to file late claims (the "***Pioneer Briefing***").

29. To date, the Court has not set a schedule for hearing argument or deciding the disputed issues raised in the *Pioneer Briefing*. The Court also has not set a schedule for briefing, arguing, or deciding the merits of the Late Claims Motions.

### **The Settlement**

30. The principal terms of the Settlement are as follows: 1) the GUC Trust agrees to pay \$15 million (the "**Settlement Amount**") to a settlement fund and up to another \$6 million for providing notice; 2) the GUC Trust agrees to file a motion seeking entry of a Claims Estimate Order estimating the aggregate allowed General Unsecured Claims of Plaintiffs in an amount that could equal or exceed \$10 billion; 3) the GUC Trust Beneficiaries agree to waive any claim to the Settlement Amount and, if the Claims Estimate Order is entered, the Adjustment Shares

(or the value thereof), and any Adjustment Shares issued (or the value thereof) will be deposited into the settlement fund for the sole benefit of Plaintiffs; and 4) all Plaintiffs agree (or will be deemed to agree) to waive all current and future claims against the GUC Trust, the GUC Trust beneficiaries, the Avoidance Action Trust and certain other parties, and instead seek satisfaction of such claims from the settlement fund.

31. Based on consultation with counsel, the GUC Trust Monitor, a review of the voluminous materials provided to the GUC Trust by both Plaintiffs and New GM, and my experience with other complex—and often protracted—litigations related to the Recalls, I believe the GUC Trust’s decision to enter into the Settlement to be a prudent and reasonable exercise of the Administrator’s business judgment. The Settlement will maximize recovery for the benefit of the GUC Trust Beneficiaries, while minimizing the substantial risks posed by the Late Claims Motions. In reaching this conclusion, the Administrator considered the following significant factors:

32. First, absent a Settlement, the GUC Trust would likely be required to litigate issues relating to the Recalls into the foreseeable future. None of the Late Claims Motions has been decided at this point, and the litigation of those Motions will likely require at least several months. Regardless of who prevails on those Motions, the Court’s ruling(s) will almost certainly be appealed, a process that will consume many additional months. If any part of the Court’s decisions are reversed, the parties may be required to relitigate the Motions. Taken together, the process could require several years.

33. Second, litigating the Late Claims Motions to their conclusion would require the GUC Trust to incur significant litigation and administrative costs. Together, litigation of the Late Claims Motions and any subsequent allowance proceedings could consume a substantial

portion of the GUC Trust's remaining assets—assets that otherwise would be available for distribution to the GUC Trust Beneficiaries. Because continued litigation would endanger the remaining Trust Assets, it would necessarily delay any further distributions of Trust Assets to its current beneficiaries.

34. Third, the outcome of the Late Claims Motions and any subsequent allowance proceedings is uncertain. The GUC Trust believes its prior opposition to the Late Claims Motions and its analysis of the *Pioneer* factors are based on principled legal arguments. That said, litigation of the Motions would be fact-intensive and would involve complex legal questions, with uncertain ultimate resolution.

35. The GUC Trust has expended substantial resources in considering the merits and valuation of Plaintiffs' claims—including, among other things, a review of the materials provided to the Trust by Plaintiffs and New GM, numerous in-person and telephonic conferences the Trust conducted with each side of the dispute and extensive legal analysis conducted by the GUC Trust's counsel. The GUC Trust has legal and factual arguments that may refute some or all of those claims. However, the Trust recognizes that Plaintiffs nevertheless may succeed in having the Late Claims valued at billions of dollars. If Plaintiffs succeeded on their Late Claims, then absent the proposed Settlement the current GUC Trust Beneficiaries could be forced to surrender rights to future distributions of GUC Trust Assets, and could even be required to return previously distributed funds (as plaintiffs have reserved the right to seek to claw back previously distributed funds).

36. Fourth, and finally, counsel to the Participating Unitholders (representing approximately sixty-six percent (66%) of the Trust's outstanding Units) has expressly informed the Trust that the Participating Unitholders support and agree with the Trust's decision to enter



into the Settlement. The Trust owes a fiduciary duty to its Unitholders, and is required to act in their best interests under the terms of the GUC Trust Agreement. The Participating Unitholders' support for the Settlement is another factor considered by the GUC Trust in determining that entry into the Settlement is in the best interests of those parties for whose benefit the Trust was created.

37. The terms of the proposed Settlement were negotiated at arms-length and in good faith. Due to the significant risks that the Late Claims Motions present to the GUC Trust Beneficiaries, the GUC Trust first entered into settlement negotiations with plaintiffs beginning in May 2017. All parties to the negotiations were represented and advised by experienced counsel, and negotiations involved intensive communications over a period of several months. During this period, the parties' representatives engaged in multiple in-person and telephonic meetings, and exchanged numerous drafts of the Settlement Agreement and ancillary documents.


38. I believe that the Settlement is in the best interests of the GUC Trust, the Old GM estates and the GUC Trust Beneficiaries because it provides those parties with substantial concrete benefits. The Settlement will resolve the long-standing dispute regarding the timeliness of the Late Claims, preserve the distributable assets for the GUC Trust Beneficiaries, and eliminate the risk of claw-backs of previously distributed assets. The Settlement will also clear the way for future distributions to GUC Trust Beneficiaries, and allow the GUC Trust to wind-down the affairs of the Debtors in accordance with the Plan in the near term. Because it maximizes recoveries for GUC Trust Beneficiaries, the Settlement clearly is in accord with the duties of the GUC Trust and the GUC Trust Administrator under the Plan and the GUC Trust Agreement.

39. To be sure, the Settlement comes at a cost to the Trust's Beneficiaries. As noted above, the GUC Trust has agreed in the Settlement to pay \$6 million to distribute notice of the Settlement and \$15 million to establish the Settlement Fund. The funds would otherwise potentially be available to Beneficiaries if the GUC Trust ultimately prevailed in the Late Claim Motion litigation. However, given the substantial benefits of the Settlement, these costs are reasonable and prudent. Indeed, for that reason and others, the Settlement is supported by the Participating Unitholders, who have represented that they hold a substantial proportion of the outstanding GUC Trust Units.

40. In consideration of all the above issues, it is my opinion that the Settlement falls within the range of reasonableness—well above the lowest point in the range of reasonableness—and provides the best outcome for the GUC Trust Beneficiaries. My opinion is buttressed by the advice of the GUC Trust Monitor and the opinion of multiple experienced bankruptcy counsel—those representing the GUC Trust and Participating Unitholders—who have been intimately involved in the ignition switch litigations since they began in 2014 and who negotiated and support the Settlement.

41. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: Wilmington, Delaware  
May 2, 2018

  
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David A. Vanaskey Jr.