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Relates to ECF Nos. 14392, 14393

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OBJECTION OF WILMINGTON TRUST COMPANY, AS GUC TRUST ADMINISTRATOR, TO AMERICAN AXLE & MANUFACTURING, INC.'S MOTION TO INCLUDE THE TONAWANDA FORGE SITE IN THE RACER TRUST OR, IN THE ALTERNATIVE, FOR AUTHORITY TO FILE A LATE CLAIM AGAINST THE DEBTORS TO PARTICIPATE IN DISTRIBUTIONS FROM THE GUC TRUST

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I. PRELIMINARY STATEMENT

The present motion turns on a basic legal question—whether a creditor who had a contingent claim at the time of bankruptcy and who received actual notice of the bankruptcy and Bar Date[1] should be allowed to pursue a late claim. For nine years, the movant, American Axle & Manufacturing, Inc. ("**American Axle**"), waited to prosecute its claim despite its knowledge of the facts underlying the claim. The claim arose out of the environmental contamination of a piece of property that took place decades before the Old GM bankruptcy. The facts, as articulated in American Axle's own papers, reveal it not only knew about the environmental contamination, but had also actively participated in administrative proceedings involving the contaminated property prior to the Old GM bankruptcy. Furthermore, American Axle was timely served with all notices throughout the Old GM bankruptcy proceeding, including notice of the filing itself, of the Sale, and of the Bar Date. Even with actual knowledge of the bankruptcy and actual knowledge of the property's contamination, American Axle nevertheless failed to file a proof of claim by the Bar Date.

In the Motion, American Axle seeks permission to assert a late claim against the GUC Trust because American Axle claims that it was unaware of "its interest" in the Old GM bankruptcy case. This entire argument is based on a flawed premise—that a creditor's subjective awareness of its claim is a prerequisite to having an actionable "claim" for bankruptcy purposes, and that a debtor bears some responsibility for making a creditor aware of the underlying basis of the claim. In making this argument, American Axle ignores Second Circuit law as to when a prepetition claim arises under section 101(5)(A) of the Bankruptcy Code. Consideration of the applicable case law makes clear that American Axle had a bankruptcy claim at the Bar Date, albeit a contingent or

[1] Capitalized terms used but not otherwise defined in this Preliminary Statement bear the meaning given elsewhere in this Objection.

unmatured one. Nevertheless, contingent creditors, like all other creditors, are required to file claims by the applicable bar date. American Axle simply failed to do so and should be bound by this fact.

American Axle has now filed a motion seeking to file a late claim against the GUC Trust for costs associated with remediation of the contaminated property and, alternatively, for the property to be added to the RACER Trust as a property to be remediated in accordance with the Trust's mission (the "**Motion**"). [ECF No. 14392.] However, for the reasons set forth more fully herein, the relief sought by American Axle is unavailable as a matter of law because (1) American Axle received actual notice of the Old GM bankruptcy and the Bar Date; (2) American Axle had a contingent claim at the Bar Date; (3) American Axle's failure to file a timely proof of claim was based upon its own misunderstanding about when a claim arises, and this mistake of law cannot qualify as excusable neglect; and (4) American Axle's filing of a late claim would be futile because the claim is not an allowable claim. The Motion should be denied in its entirety.

II. BACKGROUND

A. History of the Tonawanda Forge Site

The Tonawanda Forge Site (the "**Site**") is located in Erie County, New York. The property was once part of the General Motors Tonawanda Engine Plant facility, which historically consisted of three major operations: the engine plant, the foundry complex, and the forge facility. [ECF No. 14393-4, at 4.] Due to industrial processes taking place there, the Site became contaminated with hazardous materials. [Id.] On February 18, 1994, Old GM sold the Site to American Axle pursuant to an asset purchase agreement. [ECF No. 14393-3, at 3.] In the asset purchase agreement, Old GM disclosed to American Axle that the property was contaminated with mono or polychlorinated biphenyl ("**PCBs**"). See Certification of Marita S. Erbeck in Support of the GUC Trust Objection

(attached as Exhibit A) (the "**Erbeck Cert.**").[2] The asset purchase agreement also provided for the implementation of remedial plans to deal with hazardous materials located at the Site. *Id*.

During American Axle's tenancy, Old GM continued to investigate and remediate environmental issues at the Site. [ECF No. 14393-2, at 4.] In 2002 and 2003, the Site was the subject of an administrative proceeding before the New York State Department of Environmental Conservation. [ECF No. 14393-4, Exhibit B.] American Axle, who was the then owner of the Site, participated in the proceeding along with Old GM. [Id.] The subsequent report, issued on March 27, 2003, contained findings that the soil and groundwater at the Site contained elevated levels of PCBs. [ECF No. 14393-4.]

B. The Old GM Bankruptcy

The circumstances surrounding the General Motors bankruptcy are well documented, so this Objection offers only an abbreviated summary. On June 1, 2009, General Motors Corporation ("**Old GM**") and affiliated entities (collectively, the "**Debtors**") petitioned for Chapter 11 bankruptcy protection in this Court. *In re GM Corp*., 407 B.R. 463, 479–80 (Bankr. S.D.N.Y. 2009). The same day, Old GM filed a sale motion seeking approval to sell substantially all of its assets pursuant to 11 U.S.C. § 363 (the "**Sale**") to the entity that became New GM. *Id*. On July 5, 2009, after addressing and dismissing numerous objections to the sale, the Court approved the Sale. *Id*. On July 10, 2009, the Sale officially closed, and New GM began operating in the automaker business.

[2] A copy of the Asset Purchase Agreement By and Between American Axle & Manufacturing, Inc. and General Motors Corporation, dated February 18, 1994 was filed in *General Motors LLC v. Lewis Bros., LLC*, Case No. 1:10-cv-00725-WMS-LGF (W.D.N.Y. September 2, 2010). The agreement is available as Exhibit 2 of the Affirmation of R. Hugh Stephens in Support of a Motion for a Preliminary Injunction and the Appointment of a Receiver, March 14, 2011, ECF No. 18-1.

C. The Bar Date

On September 2, 2009, Old GM filed a motion requesting that the Court set a deadline (the "**Bar Date**") for all proofs of claim relating to prepetition claims against Old GM or any of its affiliated debtors that did not appear on schedules of assets and liabilities. [See ECF No. 3940.] The Bar Date motion contained a proposed form of notice of the Bar Date, the proposed procedures for delivering such notice, and a proposed model proof of claim. [Id.] On September 16, 2009, the Court issued an order approving the motion and establishing November 30, 2009 at 5:00 p.m. (Eastern Time) as the Bar Date. [ECF No. 4079.] The order further stated:

> [A]ny holder of a Claim against the Debtors that is required but fails to file a Proof of Claim in accordance with this Bar Date Order . . . shall be forever barred, estopped and enjoined from asserting such Claim against each of the Debtors and their respective estates (or filing a Proof of Claim with respect thereto), and each of the Debtors and their respective chapter 11 estates, successors, and property shall be forever discharged from any and all indebtedness or liability with respect to such Claim.

[Id. at 5.]

D. American Axle Fails to File a Proof of Claim Prior to the Bar Date

American Axle was a known creditor at the time of the bankruptcy filing and received *actual notice* of the bankruptcy. Throughout the bankruptcy process, The Garden City Group, Old GM's notice and claims agent, served American Axle with all required notices at numerous addresses. These notices included notice of the sale hearing [ECF No. 2852], notice of the order confirming the Debtors' plan [ECF No. 10205], and notice of the Bar Date for filing proofs of claim. [ECF No. 4238.] Notwithstanding the notice of the bankruptcy and these critical events, American Axle failed to file a proof of claim.

E. Creation of the GUC Trust and RACER Trust

On March 29, 2011, the Court entered an order confirming the Debtors' second amended joint chapter 11 plan (the "**Confirmation Order**"). [ECF No. 9941.] Pursuant to the Confirmation Order and the plan that it confirmed, the Debtors established the General Unsecured Creditors Trust (the "**GUC Trust**"), which has since that time been administered by Wilmington Trust Company. Pursuant to the terms of the Plan and Confirmation Order, the GUC Trust holds certain assets of Old GM, and these assets have been used to pay creditors' unsecured claims on a pro rata basis. At this time, the Debtors' unsecured creditors have received distributions in the amount of approximately 29.6% of allowed claims.

In addition to the GUC Trust, the plan also called for the creation of the Revitalizing Auto Communities Environmental Response Trust (the "**RACER Trust**").[3] The RACER Trust's mission is to clean up and position for redevelopment properties owned by Old GM before its bankruptcy. The Trust was formally established in March 2011 pursuant to a Consent Decree and Settlement Agreement [ECF No. 9836, Exhibit C] (the "**Settlement**"). The Settlement was entered into by the Debtors, the United States, 14 individual states, and the Saint Regis Mohawk Tribe. Each of the governmental entities who participated in the Settlement had filed timely proofs of claim to recover environmental remediation costs from Old GM. [Id. at 4.] The Settlement covered 89 properties in 14 states that had suffered environmental contamination during Old GM's tenancy and were the subject of environmental response activities and other work. [Id. at 2.] As consideration for participating in the Settlement and having properties added to the Trust, the government creditors agreed that their proofs of claim would be deemed satisfied and they would not receive any other distributions in the bankruptcy on account of those claims. [Id. at 56–57.]

[3] General information regarding the RACER Trust is available on the Trust's website, https://www.racertrust.org.

F. Designation of the Site as a Superfund Site

In May 2013, the Site was listed as a Class 2 site in the State Registry of Inactive Hazardous Waste Sites (the list of State Superfund sites). [ECF No. 14393-3.] With the present owner, Lewis Brothers LLC, no longer operating, American Axle asserts that it has now become concerned that it could be required to shoulder future remediation costs. [ECF No. 14393-6.] American Axle believes the environmental remediation efforts should be funded and handled by the RACER Trust and, through the Motion, it seeks to have the Site added to the RACER Trust. [ECF No. 14392.] If the Site cannot be included in the RACER Trust, American Axle seeks the alternative relief of leave to file a late claim against the GUC Trust.

For the reasons set forth more fully below, the Motion should be denied because (1) American Axle received actual notice of the bankruptcy and Bar Date; (2) American Axle had a contingent claim that needed to be filed by the Bar Date in order for it to be preserved; (3) American Axle's failure to file a claim was based upon a mistake of law and thus was not "excusable neglect"; and (4) American Axle's late claim would be futile because the claim would be disallowed on the merits.

III. LEGAL ARGUMENT

A. American Axle Received Actual Notice of the Bankruptcy

Through the Motion, American Axle has argued that not allowing it to pursue its late claim would deprive it of due process. Because the company received actual notice of the Old GM bankruptcy, this position rings hollow and the request for leave to assert a late claim against the GUC Trust should be denied.

The due process prerequisite for discharging a creditor's claim in bankruptcy is that the creditor be given proper notice. *See In re U.S.H. Corp. of New York*, 223 B.R. 654, 658 (Bankr.

S.D.N.Y. 1998). To satisfy due process, a party seeking relief must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

American Axle does not dispute having received notice of the Old GM bankruptcy or the Bar Date, nor could it. The Debtors' claims and noticing agent served American Axle with all necessary notices, including notice of the Sale, of the Confirmation Order, and, most importantly, of the Bar Date for filing proofs of claim.[4] These notices were sent to American Axle at numerous addresses. American Axle tries to avoid this fact and makes its case for a due process violation by saying it lacked "sufficient notice regarding *its interest* in the initial bankruptcy proceedings." [ECF No. 14393-6, at 14] (emphasis added). However, due process does not obligate a debtor to notify creditors of the nature or scope of potential claims or to advise creditors regarding the viability or merits of such claims. To the contrary, creditors themselves have the "responsibility to diligently investigate what claims they may have against the debtor." *DPWN Holdings (USA), Inc. v. United Air Lines, Inc.*, 871 F. Supp. 2d 143, 158 (E.D.N.Y. 2012); *see also In re Lehman Bros. Holdings Inc.*, 433 B.R. 113, 126 (Bankr. S.D.N.Y. 2010) ("Creditors act at their peril where they fail to adequately investigate and pursue their rights."). By providing American Axle with actual notice of the "debtor's bankruptcy case and applicable bar date," the Debtor satisfied its due process obligations. *In re XO Commc'ns, Inc.*, 301 B.R. 782, 792 (Bankr. S.D.N.Y. 2003) ("The

[4] In fact, American Axle was given notice throughout the Old GM bankruptcy. See [ECF No. 2852], [ECF No. 4238], and [ECF No. 10205] (Affidavits of Service by Garden City Group, the Debtor's court-appointed noticing agent, of Notice of Interim Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates; Interim Order Pursuant to Sections 105(a) and 362 of the Bankruptcy Code (I) Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors' Estates, and (II) Scheduling a Final Hearing; Notice of Sale Hearing to Sell Substantially All of Debtors' Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; Notice of Bar Dates for Filing of Proofs of Claim; Notice and a Proof of Claim Form; Notice of (I) Entry of Order Confirming Debtors' Second Amended Joint Chapter 11 Plan and (II) Occurrence of Effective Date).

Due Process Clause of the Fifth Amendment dictates that a debtor's creditors receive notice of the *debtor's bankruptcy case and applicable bar date* so that creditors have an opportunity to make any claims they may have against the debtor's estate.") (emphasis added).

Moreover, American Axle's purported lack of notice regarding "its interest" in the bankruptcy does not align with the facts set forth in its Motion. The 1994 asset purchase agreement that conveyed the Site to American Axle disclosed the presence of PCBs and other hazardous materials.[5] [Erbeck Cert.] Further, the Motion acknowledges that American Axle has known about environmental issues at the Site since before the Old GM bankruptcy, as "*during American Axle's tenancy* [i.e., from 1994 to 2008], Old GM investigated and remediated contaminants disposed by Old GM that pre-dated American Axle." [ECF No. 14393-2, at 4] (emphasis added). In fact, several years before the Old GM bankruptcy, American Axle was involved in administrative proceedings concerning the cleanup of PCBs at the Site. *See In the Matter of the Disputed Regulatory Program Fees of GM Powertrain - Tonawanda Engine Plant American Axle & Manufacturing, Inc.*, 2003 WL 1880837, at *3 (N.Y. Dept. Env. Conserv. March 27, 2003). Thus, even if due process did demand that creditors have notice of their individual interests in the proceeding (which it does not), American Axle had that notice. It knew of the environmental contamination and knew that as a former owner and operator of the Site, it was a potentially responsible party under state and federal environmental law. Given the facts, American Axle's

[5] Section 6.8 of the agreement states that "GM has informed [American Axle] that the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1., may include, among other things, transformers and capacitors that may contain mono or polychlorinated biphenyl ("PCBs") dielectric or other materials." The agreement further provides that "[American Axle] hereby expressly releases and covenants not to sue GM with respect to environmental matters or conditions regarding the Assets, the Real Property, as defined in Section 1. 1 .1, or the Business, whether existing before or after the date of Closing, including, but not limited to, environmental matters arising from or related to the presence of PCBs, asbestos, wood floor blocks, ceiling and floor tiles, buildings, refractory brick and any substances, materials or structures at or about the Real Property, as defined in Section 1.1.1. or in or about the Assets."

interest in the bankruptcy proceedings was clear, and the suggestion that it has somehow been deprived of due process is simply not credible.

American Axle's actual knowledge of the Debtors' bankruptcy proceeding and its actual knowledge of the ongoing environmental remediation provided the information necessary for American Axle to guard its rights and file a claim. It failed to do so through no fault of Old GM.

B. American Axle Had a Contingent Claim Within the Meaning of Section 101(5)(A) of the Bankruptcy Code.

Prior to filing the Motion, American Axle made no effort to pursue its claim. The best explanation for American Axle's failure to file a timely proof of claim is that it fundamentally misunderstands what a "claim" is and when it arises for bankruptcy purposes.

A "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). In defining "claim" in such a way, Congress intended that "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case," thus affording debtors "the broadest possible relief in the bankruptcy court." H.R. Rep. 95-595 (1978). The Second Circuit has held "that the term 'claim' is sufficiently broad to encompass any possible right to payment." *In re Mazzeo*, 131 F.3d 295, 302 (2d Cir. 1997). The Supreme Court has similarly advanced the view that "claim" has "the broadest available definition." *F.C.C. v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 302 (2003) (quoting *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991)).

There is no doubt "a 'claim' can exist under the Code before a right to payment exists under [non-bankruptcy] law." *In re Grossman's Inc.*, 607 F.3d 114, 121 (3d Cir. 2010); *In re Caldor, Inc.-NY*, 240 B.R. 180, 192 (Bankr. S.D.N.Y. 1999) ("[C]reditor need not have a cause of action that is ripe for suit outside of bankruptcy in order for it to have a pre-petition claim for purposes

of the Code"); *see also* 2 Collier on Bankruptcy ¶ 101.05 (16th ed. 2018) ("'Claim' may also include a cause of action or right to payment that has not yet accrued or become cognizable."). The Code's definition of claim expressly includes "contingent" claims—in other words, rights to payment that are "possible," "uncertain," or "[d]ependent on something that might or might not happen in the future." Black's Law Dictionary (10th ed. 2014); *see also In re Drexel Burnham Lambert Grp. Inc.*, 148 B.R. 982, 987 (Bankr. S.D.N.Y. 1992) ("[A] contingent claim is by definition a claim which has not yet accrued and which is dependent upon some future event that may never happen"). Because American Axle's right to payment was dependent on a subsequent event (that is, the company's eventual liability for cleanup costs), its claim fits seamlessly within the definition of a contingent claim. *See In re Manville Forest Prod. Corp.*, 209 F.3d 125, 129 (2d Cir. 2000) (observing that "the fact [the creditor] did not know the specific parameters of its liability . . . is precisely what made the claim contingent").

Applying this circuit's well-established law, American Axle had a contingent or unmatured claim long before the Bar Date. The Bar Date order issued by this Court stated that "any holder of a Claim against the Debtors that is required but fails to file a Proof of Claim in accordance with this Bar Date Order . . . shall be forever barred, estopped and enjoined from asserting such Claim against each of the Debtors and their respective estates." *In re Motors Liquidation Co.*, 576 B.R. 761, 766 (Bankr. S.D.N.Y. 2017). Because American Axle held a claim, it was necessary to file a proof of claim before the court-imposed Bar Date in order to preserve its rights. *See In re Enron Creditors Recovery Corp.*, 370 B.R. 90, 94 (Bankr. S.D.N.Y. 2007); *see also* Fed. R. Bankr. P. 3003(c)(3).

In seeking to prosecute its claim now, American Axle essentially confirms it had a contingent claim while Old GM's bankruptcy was ongoing. American Axle never argues its claim

arose post-bankruptcy or that it was legally prevented from filing a proof of claim by the Bar Date. Rather, American Axle explains it was "*unaware* of any potential claims it had against Old GM." [ECF No. 14393-6, at 13] (emphasis added). In short, a contingent claim existed, but it had not been identified by the holder. Further, American Axle never suggests that some subsequent event transformed what was previously a speculative or unactionable right to payment into a legally actionable claim. For example, there is no indication the company has actually been found liable for cleanup costs or has actually paid anything toward environmental remediation. American Axle only discusses "*potential* liability for the cleanup" or how "New York State *may* pursue it" and "*may* seek to hold American Axle responsible for contamination." [See ECF 14393-6] (emphasis added). As a practical matter, the sole difference between 2009 and 2019 is that American Axle has since realized it might, in the future, want to seek contribution from Old GM. Said differently, the only thing that changed was American Axle's subjective awareness of its claim. The facts make clear that it held a contingent claim at the time of the Bar Date.

The applicable tests for determining when a claim arises confirm that American Axle had a claim prior to the Bar Date. Obviously, not every future right to payment amounts to a bankruptcy claim. To deal with this uncertainty, courts employ several tests to distinguish between contingent or unmatured claims (which are, by definition, "claims" under section 101(5)) and other future claims (which may not be "claims" for bankruptcy purposes). *See In re Johns-Manville Corp.*, 552 B.R. 221, 232 (Bankr. S.D.N.Y. 2016) (describing the "accrual test," the "conduct test," the "prepetition relationship test," and the "fair contemplation test"). American Axle never discusses which test it believes the Court should apply and never explains whether the relevant test has or has not been satisfied. As the Court has previously explained, the Second Circuit has applied both the "prepetition relationship test" and the "fair contemplation test" in cases involving

environmental claims. *Id*. at 232. Regardless of which test applies, American Axle had a claim against the Debtor at the time of Old GM's bankruptcy filing.

1. American Axle Had a Pre-Bankruptcy Claim Under the Prepetition Relationship Test

In *Elliott v. General Motors LLC (In re Motors Liquidation Co.)*, 829 F.3d 135 (2d Cir. 2016), the Second Circuit addressed the issue of when "claims" arise. The court applied its own version of the prepetition relationship test from the *Chateaugay* line of cases.[6] The court stated that a claim exists for bankruptcy purposes when: (1) the conduct giving rise to the claim occurred pre-petition; and (2) there is "some minimum 'contact' or 'relationship'" between the parties such that the creditor's rights do not "depend entirely on the fortuity of future occurrences." *Elliott*, 829 F.3d at 156.

With respect to the "prepetition conduct" requirement, if a claim is contingent on future events, the claim must "result from pre-petition conduct fairly giving rise to that contingent claim." *Id.* (quoting *In re Chateaugay Corp.*, 944 F.2d 997, 1005 (2d Cir. 1991)); *see also Epstein v. Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Corp.*, 58 F.3d 1573, 1577 (11th Cir. 1995) (holding that "an individual has a § 101(5) claim against a debtor" when "the basis for liability is the debtor's prepetition conduct").[7] In this case, there is no doubt the conduct giving rise to the claim predated Old GM's bankruptcy by decades.

[6] The Second Circuit has not explicitly referred to its test as the "prepetition relationship test," as articulated by the Eleventh Circuit in *Piper Aircraft Corp.*, but courts in this circuit recognize "the basic approach articulated in *Piper* is consistent with the Second Circuit's holding in *Chateaugay*" as both "require[] a pre-confirmation relationship between the claimant and the debtor." *In re Grumman Olson Indus., Inc.*, 467 B.R. 694, 705 (S.D.N.Y. 2012).

[7] Although not a Second Circuit case, courts in this circuit have looked to the *Piper* court's articulation of the prepetition relationship test., *see, e.g.*, *Grumman Olson Industries*, 467 B.R. at 705, and this Court recently recognized "that the Second Circuit's 'fair contemplation' test was consistent with the well-known 'Piper test.'" *In re Motors Liquidation Co.*, 576 B.R. at 771.

The report by the New York State Department of Environmental Conservation found the Site is contaminated with polychlorinated biphenyl. [ECF No. 14393-4.] PCBs were banned in the 1970s as part of the Toxic Substances Control Act. *See* 15 U.S.C. § 2605. Accordingly, American Axle reasonably states that contamination took place prior to 1979 (at least 30 years before Old GM's bankruptcy). Even if contamination continued after 1979, American Axle affirms it never used PCBs during its operations. [ECF No. 14393-6, at 9.] Therefore, at the latest, the contamination took place before 1994, the year American Axle took possession of the property (at least 15 years before Old GM's bankruptcy). Further, review of the asset purchase agreement between American Axle and Old GM makes clear that American Axle was actually aware of the environmental contamination as of 1994. No matter the precise date, contamination of the Site—which is the "conduct fairly giving rise to [the] claim" and the entire "basis for liability"—occurred no less than 15 years before Old GM's bankruptcy. Underscoring this point, American Axle openly admits "the environmental contamination at the Tonawanda Forge Site was caused by Old GM's *pre-bankruptcy activity*." [ECF No. 14393-9, at 13] (emphasis added). By American Axle's own admission, the first requirement of the prepetition relationship test is satisfied.

Turning to the second requirement, a prepetition relationship, "courts require some minimum 'contact' or 'relationship' that makes identifiable the individual with whom the claim does or would rest." *Elliott*, 829 F.3d at 156 (citations omitted); *see also Piper Aircraft*, 58 F.3d at 1577 (requiring that "events occurring before confirmation create a relationship, such as contact, exposure, impact, or privity, between the claimant and the debtor"). The purpose of this requirement is "[t]o avoid any practical and constitutional problems" that future claims sometimes entail. *Elliott*, 829 F.3d at 156. The relationship element focuses on "whether the relationship was one in which both parties knew liability could arise." *Johns-Manville Corp.*, 552 B.R. at 233.

Thus, "[a] claim will be deemed pre-petition when it arises out of a relationship recognized in, for example, the law of contracts or torts." *Id.* at 233–34 (quoting *In re Chateaugay Corp.*, 53 F.3d 478, 497 (2d Cir. 1995)).

Here, the "relationship" or "contact" between American Axle and Old GM came into existence no later than 1994 when American Axle entered into a contract with Old GM to acquire the Site. From that point forward, the parties had a well-defined legal relationship based upon contractual privity. Moreover, it was out of this legal relationship that the claim arose. In other words, American Axle's contingent right to payment clearly did not "depend[] entirely on the fortuity of future occurrences," *Elliott*, 829 F.3d at 156, but was instead firmly rooted in the parties' longstanding relationship. Because the parties had a prepetition relationship, the second requirement of this test is satisfied.

American Axle never discusses the prepetition relationship test. Instead, the Motion centers on its awareness (or lack thereof) of its claim. American Axle argues "[a]n important component of due process is whether a party was aware of their claims against a debtor at the time bankruptcy proceedings take place." [ECF No. 14393-6.] It relies upon *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268 (5th Cir. 1994) in support of this proposition. However, *Lemelle* actually weighs against American Axle, as the ruling in *Lemelle* was based upon that court's application of the prepetition relationship test. *See In re Placid Oil Co.*, 463 B.R. 803, 814 (Bankr. N.D. Tex. 2012), *aff'd*, 753 F.3d 151 (5th Cir. 2014) (noting "that the 'pre-petition relationship test' was applied in *Lemelle*").

In *Lemelle*, the Fifth Circuit analyzed *Piper Aircraft* and *Chateaugay* and found those cases persuasive. *Lemelle*, 18 F.3d at 1277. The opinion is not concerned with the creditor's awareness of its claim, as American Axle would have it. Rather, the crucial point was that the "record [was]

devoid of any evidence of *any pre-petition contact, privity, or other relationship* between [the debtor], on the one hand, and [the claimants], on the other." *Id*. (emphasis added). The court found "the absence of *this evidence* [i.e., evidence of a prepetition relationship] preclude[d] a finding by the district court that the claims asserted by [the claimants] were discharged in [the debtor's] bankruptcy proceedings." *Id*. (emphasis added). The court was quick to point out that if a prepetition relationship had existed between the parties, the analysis would have been different. *Id.* at 1278. Because in this case, there is an undeniable relationship between the parties that has existed since many years before the bankruptcy filing, American Axle's reliance on *Lemelle* is misplaced. If anything, this case favors the application of the pre-petition relationship test under which American Axle undoubtedly had a claim.

Because application of the prepetition relationship test establishes that American Axle had a prepetition "claim," it was required to file a proof of claim by the Bar Date if it wished to participate in any distribution from the GUC Trust.

2. American Axle Had a Pre-Bankruptcy Claim Under the Fair Contemplation Test

A second, but closely related, test is the fair contemplation test. Under this test, a contingent claim is a "claim" when "the occurrence of the contingency or future event that would trigger liability was 'within the actual or presumed contemplation of the parties at the time the original relationship between the parties was created.'" *In re Motors Liquidation Co.*, 576 B.R. at 771 (quoting *In re Chateaugay Corp.*, 944 F.2d at 1004). The fair contemplation test essentially layers onto the prepetition relationship test an additional requirement that the parties contemplated the event triggering liability when their relationship began. Thus, "[t]he difference between the relationship test and the fair contemplation test is that the fair contemplation test asks whether the

relationship has resulted in prepetition conduct that could, in the fair contemplation of the parties, give rise to liability under the non-bankruptcy law." *Johns-Manville Corp.*, 552 B.R. at 233.

The parties' relationship here—based on a contract and a transfer of property—had the clear potential to "give rise to liability under the non-bankruptcy law." In fact, the potential for liability was especially obvious, as the Site being transferred was an industrial site known by the parties to the transaction to be contaminated with hazardous materials. Applying the fair contemplation test, the "occurrence" or "future event" triggering liability is American Axle's incurrence of environmental liability, and the "original relationship" is the one created when the parties contracted to transfer the Site. The only question becomes whether the future event (the subsequent environmental liability) was contemplated when the parties' relationship began (the day the contract was signed).

Certainly, whether this occurrence was "within the actual or presumed contemplation of the parties" at the relationship's inception is best evidenced by the contract creating the relationship. Examining the asset purchase agreement plainly shows both parties were keenly aware of potential environmental liability. Indeed, the contract addresses environmental issues at length, with over thirty pages specifically dedicated to "Environmental Matters." American Axle was fully aware the property contained PCBs, as the agreement plainly discloses these contaminants. The agreement further creates mechanisms for environmental inspections, reporting, cleanup, and remediation. The agreement also obligated General Motors to indemnify American Axle for liabilities, damages, penalties, or fines related to various environmental claims, with some indemnities remaining in effect in perpetuity.[8] Without a doubt, future environmental

[8] In its Motion, American Axle does not state any particular legal basis for holding Old GM responsible. To the extent American Axle's claim is based upon the indemnification provisions of the asset purchase agreement, there is no doubt that such action constitutes a prepetition claim. *In re Houbigant, Inc.*, 188 B.R. 347, 358–59 (Bankr. S.D.N.Y. 1995)

liability was at the forefront of the parties' minds when the relationship was created, as conclusively shown by the parties' contract. Not only did the parties contemplate future environmental liability initially, subsequent events show that environmental liability remained a significant concern throughout the parties' relationship. The administrative proceedings in 2002 and 2003 revolved around the ongoing environmental remediation. At the absolute latest, American Axle knew in 2003 that liability for cleanup was a vital concern.

For American Axle to argue now that it was oblivious to a potential claim against Old GM until 2017 is completely incongruous with the contract it signed and the legal proceedings that it participated in. *See Manville Forest Prod.*, 209 F.3d at 129 (finding that "the terms of the indemnification agreements were so broad as to encompass all types of future liability, signaling that the parties actually or presumedly contemplated possible environmental liability . . ."). Future environmental claims were not just reasonably foreseeable—the parties actually contemplated and accounted for them. Even though no liability had been attributed to American Axle at the time of Old GM's bankruptcy, the company must have known such an outcome was at least probable if not entirely predictable. Thus, the requirement that the parties contemplated the event triggering liability is satisfied, and American Axle had a claim under the prepetition relationship test.

The case of *In re Chateaugay Corp.*, 944 F.2d 997 (2d Cir. 1991) supports this conclusion. There, the Environmental Protection Agency wanted to recover costs the agency had incurred cleaning up hazardous waste released by the debtor, LTV Corporation, before bankruptcy. The Second Circuit was asked to determine the applicability of a bankruptcy discharge to claims for the *future costs* of cleaning up hazardous waste. The Second Circuit ultimately affirmed the district court's ruling that the environmental claims were "dischargeable in bankruptcy, *regardless of*

(holding that "a contractual indemnification claim exists as a contingent claim against the indemnitor as of the date the indemnification agreement is executed").

when such costs are incurred, as long as they concern[ed] a release or threatened release of hazardous substances that occurred before the debtor filed its Chapter 11 petition." *Id*. at 999 (emphasis added). Remarkably, these discharged claims included claims related to releases the EPA had not determined LTV was responsible for and releases that had "not then been discovered by the EPA (or anyone else)." *Id.* at 1000.

The court based its ruling upon the "relationship" between environmental regulating agencies and those subject to regulation. *Id*. at 1005. According to the court, this relationship "provided sufficient 'contemplation' of contingencies to bring most ultimately maturing payment obligations based on pre-petition conduct within the definition of 'claims.'" *Id*. This was true even though the "EPA [did] not yet know the full extent of the hazardous waste removal costs that it may one day incur and seek to impose upon LTV" and "it [did] not yet even know the location of all the sites at which such wastes may yet be found." *Id*. Nevertheless, these uncertainties simply "render[ed] EPA's claim 'contingent,' rather than as placing it outside the Code's definition of 'claim.'" *Id*.

The Second Circuit's reasoning in *Chateaugay* is equally applicable in this case. Like the EPA in *Chateaugay*, American Axle did not actually incur the costs it now wishes to recover until after the Bar Date. However, this does not change the fact that the PCB contamination, like the contamination in *Chateaugay*, took place before bankruptcy. Moreover, the parties' relationship, like the relationship between the EPA and LTV, clearly contemplated future environmental liability. Thus, as with the environmental claims in *Chateaugay*, the claims here arose prepetition and cannot be pursued now.

According to American Axle, "whether a party was *aware* of their claims against a debtor at the time bankruptcy proceedings take place" is the key consideration in the analysis. [ECF No.

14393-6, at 11] (emphasis added). The fact is, however, a creditor's subjective awareness of its claim is not an element of any court-recognized test for determining whether or when a claim exists.[9] Assuming, *arguendo*, that a creditor's subjective awareness was relevant to the analysis, American Axle was aware of the environmental contamination and remediation efforts since 1994 when it acquired the property. American Axle tries to downplay this fact by saying it was "unaware of *the extent* to which the Site was contaminated until December of 2017." [ECF No. 14393-6, at 16] (emphasis added). This is irrelevant to the Court's analysis here. American Axle knew from the asset purchase agreement that the property was contaminated, it knew that remediation efforts were taking place during its tenancy, and, finally, it actively participated in prepetition administrative proceedings regarding contamination at the Site. American Axle's attempt to portray itself as a hapless victim is simply not convincing.

Regardless of which test applies, the conclusion is the same: American Axle had a section 101(5) bankruptcy "claim" at the Bar Date, although it remained (and may still remain) contingent. All of the events forming the basis for the claim occurred years before Old GM's bankruptcy. Likewise, the relationship between the parties was firmly established long before the bankruptcy. Lastly, the contingent future environmental liability was clearly contemplated by the parties. Because American Axle had a contingent claim, it was incumbent upon the company to file a proof of claim by the Bar Date in order to protect its rights.

[9] Under the "conduct test," a claim arises based on when the conduct giving rise to the claim took place. *See, e.g.*, *Saint Catherine Hosp. of Indiana, LLC v. Indiana Family & Soc. Servs. Admin.*, 800 F.3d 312, 315 (7th Cir. 2015). The "prepetition relationship test" modifies the conduct test by requiring "not only that there was some prepetition conduct, but also that there was some prepetition relationship between the debtor's conduct and the claimant." *In re Piper Aircraft Corp.*, 168 B.R. 434, 439 (S.D. Fla. 1994). The "fair contemplation test" essentially layers onto the "prepetition relationship test" a requirement that the event triggering liability be contemplated by the parties when their relationship began. *In re Chateaugay Corp*., 944 F.2d at 1004. The "accrual test," which has now been discredited, focused on when the right to payment arose. *In re Grossman's Inc.*, 607 F.3d 114 (3d Cir. 2010). Notably, "awareness" of a claim is immaterial under each test.

C. American Axle Cannot Demonstrate Its Failure to Timely File a Proof of Claim Was the Result of Excusable Neglect.

American Axle's failure to file a proof of claim can only be excused under Bankruptcy Rule 9006(b)(1) if its failure to act was the result of "excusable neglect" under the test articulated by the Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380 (1993). American Axle cannot meet this standard because the doctrine of excusable neglect has no application where the decision of a creditor to stay out of a bankruptcy proceeding was based on ignorance or legal error. In addition, where, as here, a Chapter 11 plan has been consummated, *see In re Motors Liquidation Co.*, 462 B.R. 494, 501 n.36 (Bankr. S.D.N.Y. 2012), courts must use "added caution" in evaluating claims of excusable neglect. *Atlas v. Chrysler, LLC (In re TALT)*, No. 10–02902, 2010 WL 2771841, at *3 (Bankr. S.D.N.Y. July 13, 2010).

Under *Pioneer*, a court must consider four factors: (i) the risk of prejudice to the debtor; (ii) the length of the delay and its potential impact on judicial proceedings; (iii) the reason for the delay, including whether it was within the reasonable control of the movant; and (iv) the movant's good faith. 507 U.S. at 395. The Second Circuit takes a "hard line" approach when applying *Pioneer* and deciding whether to allow a late-filed claim. *In re Enron Corp.*, 419 F.3d 115, 128 (2d Cir. 2005). In a typical case, three of the four *Pioneer* factors (prejudice, length of delay, and good faith) will "usually weigh in favor of the party seeking the extension," so courts focus on the third factor—the reason for the delay. *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355, 366 (2d Cir. 2003).

1. The Reason for American Axle's Delay Precludes a Finding of Excusable Neglect.

The reason for the delay, including whether it was within the reasonable control of the creditor, precludes a finding of excusable neglect in this case. The apparent reason for the delay was either American Axle's unawareness of its claim or a fundamental misunderstanding of when a claim arises for bankruptcy purposes. American Axle's proffered excuse essentially boils down to ignorance: "American Axle did not even know of its potential claim against Old GM." [ECF No. 14393-6, at 16.] Unfortunately, "ignorance of one's own claim does not constitute excusable neglect," and its mistaken belief that it had no claim to assert bars its claim now. *In re Best Prod. Co., Inc.*, 140 B.R. 353, 359 (Bankr. S.D.N.Y. 1992); *see also Matter of Penn Cent. Transp. Co.*, 42 B.R. 657, 675 (E.D. Pa. 1984) (finding there is "no exception made for claims which were unknown to a claimant until after consummation of the Plan").

Similarly, American Axle's delay could be attributed to its misunderstanding of when a claim arises under bankruptcy law, which would constitute a clear mistake of law. It appears that American Axle subjectively believed, as a legal matter, that its environmental liability had not accrued into a "claim" under the Bankruptcy Code prior to the Bar Date. If so, American Axle reached an incorrect legal conclusion because it in fact had a "claim" under the Bankruptcy Code prior to the entry of the Bar Date. As this Court very recently recognized, "a claimant's neglect [is] not excusable where its failure to comply with the rule was the result of a mistake of law." *In re Motors Liquidation Co.*, 576 B.R. at 775.

The district court's opinion in *Michigan Self-Insurers' Security Fund v. DPH Holdings Corp. (In re DPH Holdings Corp.)*, 434 B.R. 77 (S.D.N.Y. 2010) is instructive. In that case, the claimant was the Michigan Self-Insurers' Security Fund ("**Fund**"), which had been established to pay the workers' compensation obligations of self-insured employers that become insolvent and

cannot make payments to their injured workers. 434 B.R. at 79. When the debtor filed for bankruptcy, it was current on its workers' compensation payments. *Id*. After filing, the bankruptcy court entered an order stating the debtor was "authorized, but not directed, to pay or otherwise honor workers' compensation claims." *Id.* at 80.

The bankruptcy court established a bar date of July 31, 2006. *See id.* The Fund received notice of the bar date but did not file a proof of claim. *See id.* In 2009, in connection with a modification of its reorganization plan, the debtor indicated that it would stop making workers' compensation payments. *See id.* After learning about this modification, the Fund filed two proofs of claim, to which the debtor objected. *See id.* The Fund moved to permit their late claims pursuant to Bankruptcy Rule 9006(b)(1). *See id.* at 81. The bankruptcy court sustained the debtor's objection, ruling "that the Fund has not carried its burden to establish excusable neglect here in respect of its proof of claim." *Id.*

The district court affirmed the bankruptcy court's order on appeal. The Fund's excuse for its failure to file a timely proof of claim was its erroneous belief that it did not possess a claim against the debtor as of the bar date because, at that time, "[a]ll information available to the [Fund] indicated that [d]ebtors were continuing to pay all of their workers' compensation obligations." *Id.* at 85. Notwithstanding, "because 'there was always a risk' that [the debtor] would stop paying workers' compensation, the Fund was obligated to file a claim based on the contingency that [the debtor] would become unable to pay." *Id.* In so finding, the district court noted that the definition of a claim in section 101(5)(a) of the Bankruptcy Code states that a "claim" is "the right to payment, whether or not such right is . . . contingent[.]" The Bankruptcy Code and Bankruptcy Rule 3003(c)(2) clearly state that contingent claims must be filed before the bar date. *Id.* Because the reason for the Fund's delay was of a legal nature, and "[l]egal mistakes are usually not

considered excusable neglect," this district court concluded that the bankruptcy court did not abuse its discretion in denying the Fund's motion for leave to file late proofs of claim. *Id.* at 85.

American Axle, like the creditor in *DPH Holdings*, erroneously believed that it did not have a claim as of the Bar Date. This Court should similarly find that American Axle's mistake of law does not excuse its failure to file a timely proof of claim. Just like the creditor in *DPH Holdings*, American Axle could not have known with absolute certainty whether it would ultimately be required to pay anything. Nonetheless, "there was always a risk" that the need for contribution would materialize and that American Axle would have to pursue a claim against Old GM. Arguably, American Axle's claim was less contingent than the Fund's claim, as the environmental contamination giving rise to American Axle's claim occurred years before the Bar Date and was well known.

Finally, in analyzing the reason for the delay, courts also "take[] into account the movant's sophistication." *In re Hills Stores Co.*, 167 B.R. 348, 351 (Bankr. S.D.N.Y. 1994). Here, American Axle is a public company that operates more than 90 facilities in 17 countries with billions of dollars in revenue and over 25,000 employees.[10] American Axle's status as a sophisticated creditor further proves it cannot characterize its failure to file a proof of claim as excusable neglect.

American Axle voluntarily opted not to file a claim before the bar date. This choice was based upon a legal error regarding the status of its claim. As a result, the doctrine of "excusable neglect" is unavailing. *See Motors Liquidation*, 576 B.R. at 778–79; *see also Canfield v. Van Atta Buick/GMC Truck*, 127 F.3d 248, 251 (2d Cir. 1997) (per curiam) (noting "general rule that a mistake of law does not constitute excusable neglect"); *DPH Holdings, Corp.*, 434 B.R. at 85 ("Legal mistakes are usually not considered excusable neglect.").

[10] https://www.sec.gov/Archives/edgar/data/1062231/000106223118000013/axl201710k.htm.

2. The Remaining *Pioneer* Factors Also Preclude a Finding of Excusable Neglect.

American Axle fares no better with respect to the remaining *Pioneer* factors. First, regarding prejudice to the Debtor, American Axle states in conclusory fashion that there will be "little prejudice to Old GM" if its claim is allowed. [ECF No. 14393-6, at 12.] However, by focusing exclusively on this one claim, American Axle fails to see the bigger picture. "The prejudice to the Debtors is not traceable to the filing of any single additional claim but to the impact of permitting exceptions that will encourage others to seek similar leniency." *Lehman Bros. Holdings*, 433 B.R. at 121. Allowing even a single late claim risks inspiring similar efforts from creditors who also missed the bar date. *Meadows v. AMR Corp.*, 539 B.R. 246, 252 (S.D.N.Y. 2015) (finding that the allowance of late claims "years after the confirmation of the debtors' reorganization plan would create a serious risk of opening the floodgates to other potential late claims").

As other late-claims litigation in this case illustrates, *see, e.g.*, *In re Motors Liquidation Co.*, 576 B.R. 761 (Bankr. S.D.N.Y. 2017), determining whether a given creditor's "neglect" is sufficiently "excusable" frequently entails time-consuming litigation at great expense to the estate. The mere prospect of litigating additional motions to file post-bar date proofs of claim is enough to prejudice the debtor. *In re Keene Corp.*, 188 B.R. 903, 913 (Bankr. S.D.N.Y. 1995) (finding "the legal fees the estate would potentially expend in litigating [late claims] supports a finding of prejudice"). This fear of rampant late-claims litigation is especially germane in a case like this one where the universe of potential creditors is practically limitless.

Second, the delay in filing the claim was substantial. The Bar Date in this case was November 30, 2009, and American Axle filed its Motion on December 21, 2018, almost a decade later. In absolute terms, a nine-year delay *far* exceeds delays that courts have found to be

substantial in similar cases. *See, e.g., Enron Corp.*, 419 F.3d at 128 (finding that "claims filed as late as two years after the bar date" represent the outer limits of what courts allow); *In re Dana Corp.*, No. 06-10354, 2008 WL 2885901, at *6 (Bankr. S.D.N.Y. 2008) (twenty-one month delay is substantial); *In re Enron Creditors Recovery Corp.*, 370 B.R. 90, 103 (S.D.N.Y. 2007) (fifteen month delay is substantial). Notably, even if the delay were measured from when American Axle received the notification letter from New York State in December 2017, waiting a full year to act would still weigh against a finding of excusable neglect. *In re AMR Corp.*, 492 B.R. 660, 667 (Bankr. S.D.N.Y. 2013) (finding that filing a claim "more than five months after the Court entered the Bar Date Order and more than three months after the Bar Date had passed" was "significant"). Perhaps most importantly, during the period of American Axle's delay, the Debtors sold substantially all their assets, confirmed a Chapter 11 plan of reorganization, and that plan was substantially consummated. Effectively all case activity occurred during the period when American Axle sat on its rights. This fact is dispositive.

As to the fourth and final element, there is no reason to suspect American Axle has acted in bad faith. Nevertheless, the presence of good faith is almost never a determinative factor in the *Pioneer* analysis. *See Silivanch*, 333 F.3d at 366 ("And rarely in the decided cases is the absence of good faith at issue."). American Axle's good faith cannot singlehandedly overcome the fact it has failed to meet the other requirements of excusable neglect.

Because American Axle cannot demonstrate its failure to file a timely proof of claim constitutes excusable neglect, the Court should not allow it to pursue a late claim against the GUC Trust.

D. Allowing American Axle to File a Late Proof of Claim Would Be Futile Because Its Claim Would Be Disallowed.

American Axle's request to file a late proof of claim should fail for the independent reason that its claim is not allowable under section 502(e)(1)(b) and would thus be futile. The statute provides that: "the court shall disallow any claim for reimbursement or contribution of any entity that is liable with the debtor . . . to the extent that—(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim . . . ." In addition to co-debtor situations created by contract, "section 502(e)(1)(B) applies to disallow contingent reimbursement or contribution claims created by statute." 4 Collier on Bankruptcy ¶ 502.06[d] (16th ed. 2018). In explaining this provision, Collier gives the specific example of a claim for contribution arising under CERCLA. *Id*. In such a case, the government is the primary obligee and may seek satisfaction of its claim against the debtor and from other parties who, under the statute, are obligated with the debtor for the same environmental liability. Applying this section, bankruptcy courts have repeatedly found that creditors are prohibited from seeking contribution from a debtor where the debtor and creditor are jointly liable under environmental statutes and where the creditor has not yet expended any funds when the claim is made. *See, e.g.*, *In re Lyondell Chem. Co.*, 442 B.R. 236, 258 (Bankr. S.D.N.Y. 2011); *In re Chemtura Corp.*, 443 B.R. 601, 627 (Bankr. S.D.N.Y. 2011); *In re APCO Liquidating Tr.*, 370 B.R. 625, 637 (Bankr. D. Del. 2007).

By the express terms of section 502(e)(1)(B) of the Bankruptcy Code, three elements must be met for a claim to be disallowed under this section: (1) "the party asserting the claim must be liable with the debtor on the claim of a third party"; (2) "the claim must be contingent at the time of its allowance or disallowance"; and (3) "the claim must be for reimbursement or contribution."

In re Lyondell Chem. Co., 442 B.R. at 243. All three elements are present here, which ultimately defeats American Axle's claim and renders a late filing futile.

First, American Axle admits it shares (or at least potentially shares) liability for cleanup of the Site as a potentially responsible party. To be sure, American Axle's claim is premised on the theory that "if the Debtors pay less than their share of cleanup costs," [American Axle] will have to pay more," which is "the essence of co-liability." *Lyondell*, 442 B.R. at 253; *see also Matter of Baldwin-United Corp.*, 55 B.R. 885, 891 (Bankr. S.D. Ohio 1985) ("By its very nature a claim for contribution presupposes a sharing of liability and thus a codebtor relationship."). Thus, the co-liability element is present.

Second, American Axle's claim is contingent. Environmental contribution claims remain contingent until the co-liable creditor *actually pays* for the cleanup or otherwise expends funds on account of the claim. *In re Chemtura Corp.*, 443 B.R. at 615 (holding "that claims for *future* remediation costs, not already paid for, are contingent, and satisfy the "Contingency" Element of section 502(e)(1)(B) doctrine"); *see also APCO Liquidating Tr.*, 370 B.R. at 636 ("The law is clear that 'the contingency contemplated by section 502(e)(1)(B) relates to both payment *and* liability.' . . . Therefore, a claimant's 'claim is contingent until their liability is established . . . *and* the co-debtor has paid the creditor.") (quoting *In re Drexel Burnham Lambert Group*, 148 B.R. 982 (Bankr. S.D.N.Y. 1992)). Based upon its Motion, American Axle has yet to spend a single penny on environmental remediation. Consequently, it cannot be known "whether [American Axle] will lay out the funds necessary to engage in the curative action, and, if so, to what extent," meaning that American Axle's claim necessarily remains contingent. *Lyondell*, 442 B.R. at 250.

Assuming American Axle's claim is no longer contingent, it should still be disallowed because it was certainly contingent at the Bar Date. Letting a creditor whose claim would have

been disallowed under section 502(e)(1)(B) prosecute a late claim once the claim is no longer contingent would allow creditors to make an end-run around section 502(e)(1)(B).

Third, American Axle's claim is for "contribution" or "reimbursement" as those terms are used in § 502(e)(1)(b). "Reimbursement" is a "a broad word which encompasses whatever claims a co-debtor has which entitle him to be made whole for monies he has expended on account of a debt for which he and the debtor are both liable." *In re Lyondell Chem. Co.*, 442 B.R. at 256 (quoting *In re Wedtech Corp.*, 87 B.R. 279, 287 (Bankr. S.D.N.Y. 1988)); *see also In re Chemtura Corp.*, 443 B.R. at 627 (finding that "the claims at issue plainly are for 'reimbursement' as that term is used in section 502(e)(1)(B)" where "[t]he Claimants seek repayment of money that they allege that *they will spend on environmental remediation*, and the Debtors and the Claimants, all [potentially responsible parties], are co-liable for environmental cleanup") (emphasis added).

Because American Axle's contingent claim seeks contribution or reimbursement from Old GM on a debt for which the parties are co-liable, all three elements of section 502(e)(1)(b) are present. The Court should therefore deny American Axle's request to file a late claim against the GUC Trust because the claim would not be an allowable claim under section 502(e)(1)(B), making the late claim futile. *See Greatamerican Fed. Sav. & Loan Ass'n v. Adcock Excavating, Inc.*, No. 89 C 3794, 1990 WL 51219, at *4 (N.D. Ill. Apr. 17, 1990) (affirming the bankruptcy court's refusal to allow a late-filed claim where "the application of § 502(e)(1)(B) [made] filing of a late claim futile.").

E. The GUC Trust Takes No Position Regarding the Request to Include the Site in the RACER Trust.

The GUC Trust takes no position as to whether the Tonawanda Forge Site can be included in the RACER Trust at this time.

CONCLUSION

For the reasons above, this Court should deny the Motion in its entirety.

Dated: New York, New York
February 22, 2019

Respectfully submitted,

By: /s/ Kristin K. Going
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Relates to ECF Nos. 14392, 14393

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

CERTIFICATION OF MARITA S. ERBECK IN SUPPORT OF THE GUC TRUST OBJECTION

MARITA S. ERBECK, of full age, under penalty of perjury, hereby certifies and states as follows:

1. I am an attorney at law of the State of New York, and I am a partner with the law firm of Drinker, Biddle & Reath LLP, attorneys for the Wilmington Trust Company, as trustee for and administrator of the Motors Liquidation Company GUC Trust. I make this Certification in support of the *Objection of Wilmington Trust Company, As GUC Trust Administrator, to American Axle & Manufacturing, Inc.'s Motion to Include the Tonawanda Forge Site in the RACER Trust*

or, in the Alternative, for Authority to File a Late Claim Against the Debtors to Participate in Distributions from the GUC Trust (the "Objection").

2. Attached hereto as Exhibit A is a true and correct copy of the Asset Purchase Agreement by and between American Axle & Manufacturing, Inc. and General Motors Corporation, dated February, 18, 1994 (the "Asset Purchase Agreement") as it was filed by General Motors LLC in *General Motors LLC v. Lewis Bros., LLC et al.*, Case No. 1:10-cv-00725-WMS-LGF (W.D.N.Y. September 2, 2010) and as it appears on the public docket in that case. I note that the Asset Purchase Agreement was redacted in connection with its filing in 2011, and not in connection with the Objection; the document attached as Exhibit A is exactly as it appears on the public docket in the *Lewis Bros.* litigation. The Asset Purchase Agreement is also accessible on PACER as Exhibit 2 of the *Affirmation of R. Hugh Stephens in Support of a Motion for a Preliminary Injunction and the Appointment of a Receiver* [ECF No. 18-1] filed in the *Lewis Bros.* litigation on March 14, 2011.

I certify, under penalty of perjury, under the laws of the United States of America, that the foregoing statements are true and correct.

/s/ Marita S. Erbeck
Marita S. Erbeck

Dated: February 22, 2019
New York, New York

EXHIBIT A

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

AMERICAN AXLE & MANUFACTURING, INC.

AND

GENERAL MOTORS CORPORATION

February 18, 1994

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated as of February 18, 1999 by and between AMERICAN AXLE & MANUFACTURING, INC., a Delaware corporation ("AAM") and GENERAL MOTORS CORPORATION, a Delaware corporation ("GM").

The purpose of this Agreement is to set forth the terms and conditions applicable to the sale to AAM of the Assets of the Final Drive and Forge Business Unit heretofore conducted by GM through its Saginaw Division and the establishment by AAM and GM of a Strategic Partnership for the production of products formerly manufactured by the Final Drive and Forge Business Unit.

Now, Therefore, in consideration of that purpose and for good and valuable consideration had and received and the mutual covenants and agreements hereinafter set forth, AAM and GM agree as follows:

Definitions

The following terms, as used herein, shall have the following meanings whether used in the singular or plural (other terms are defined in Sections to which they pertain):

"AAM" means American Axle & Manufacturing, Inc., a Delaware corporation.

"Affiliate" means a company, partnership or other entity in which a Party owns, directly or indirectly, more than fifty (50) percent of the outstanding capital stock or other equity interests.

"Agreement" means this Agreement including its Exhibits which are incorporated by reference herein.

"Ancillary Agreements" means, collectively, the Ancillary Agreements described in Section 8.1.4.

"Assets" see Section 1.1.

"Assumed Obligations" see Section 3.1.

"Authorized Signatory" means a person with the legal authority to act for, and whose signature shall be binding upon, a Party.

"Book Value" means the record amount of the Assets as shown on GM's books with inventories valued at the lower of actual cost (including actual burden rates) or market on

first-in, first-out basis and otherwise determined in accordance with generally accepted accounting principles. Certain finished goods inventory will be valued at the selling price.

"Business" means the operations of the Final Drive and Forge Business Unit conducted heretofore and through the Closing by GM from manufacturing facilities located in Detroit, Michigan and Hamtramck, Michigan; Three Rivers, Michigan; Buffalo, New York; and Tonawanda, New York; and the leased office facility located in Saginaw, Michigan.

"Class A Preferred Stock" means AAM's Class A Variable Rate Non-Voting Convertible Preferred Stock, which shall have the terms set forth in AAM's Amended and Restated Certificate of Incorporation attached hereto as Exhibit 8.2.5.

"Class B Preferred Stock" means AAM's Class B 8% Non-Voting Preferred Stock, which shall have the terms set forth in AAM's Amended and Restated Certificate of Incorporation attached hereto as Exhibit 8.2.5.

"Closing" see Section 9.1.

"Contract" see Section 4.1.12.

"EDS" means Electronic Data Systems Corporation, a GM Affiliate.

"Employee Benefit Plan" means any Employee Pension Benefit Plan, Employee Welfare Benefit Plan or any other material vacation, severance, bonus or other benefit plan or program, whether or not subject to ERISA.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA Section 3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA Section 3(1).

"Environmental Laws" see Section 6.17.A.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Estimated Closing Date Statement" see Section 2.1.1.

"Excess Inventory" means Inventory (excluding Non-Productive Inventory) of which the on-hand quantity exceeds Requirements.

"Excluded Assets" see Section 1.2.

"Final Closing Date Statement" see Section 2.1.1.

"GM" means General Motors Corporation, a Delaware corporation, including its unincorporated division known as the Saginaw Division.

"GMCL" means General Motors of Canada Limited.

"GMCL Facility" means GMCL's facility in St. Catharine's, Ontario, Canada.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended.

"IAM" means the International Association of Machinists.

"including" means including without limitation unless otherwise specifically indicated.

"Inventory" see Section 1.1.2.D.

"knowledge" or "best knowledge" as it relates to the knowledge of GM or any of the Affiliates of GM means the knowledge of the Saginaw Finance Director, the Final Drive and Forge Business Unit Director, and the plant managers at each facility of the Business, after all reasonable inquiry with appropriate personnel of GM with respect to the subject matter involved.

"Non-Productive Inventory" means (i) inventory of materials consumed in the manufacturing process but not incorporated into the finished products, and (ii) replacement parts used to service machines, both of which are recorded on the balance sheet of GM as an asset.

"Obsolete Inventory" means inventory for which no Requirements exist.

"Party" or "Parties" means AAM or GM or both.

"Permitted Encumbrances" see Section 4.1.4.C.

"Preferred Stock" means, collectively, the Class A Preferred Stock and the Class B Preferred Stock.

"Purchase Price" see Section 2.1.

"Real Property" see Section 1.1.1.

"Requirements" means the quantity of Inventory, excluding Non-Productive Inventory, necessary to meet all GM's requirements, including the GM parts and service organization, over the 6 months following the date of the Closing.

"Saginaw Sublease" see Section 8.1.9.

"Strategic Partnership" has the meaning set forth in the letter attached hereto as Exhibit 1.1; provided, however, that such term does not mean and shall not be deemed to imply that any partnership (as such term is understood under applicable partnership law) exists between GM or any of its Affiliates and AAM with respect to the imposition of liability to third parties including, with respect to tax matters; and neither AAM nor GM or any its Affiliates shall have the authority to legally bind or create any obligation on behalf of the other.

"Taxes" means any federal, state, local or foreign tax or assessment (including any interest or penalties).

"Tax Return" means any return, declaration, report, claim for refund or information return or statement, or any other similar filings, related to Taxes, including any schedule or attachment thereto.

"Technical Documentation" see Section 1.1.3.C.

"Transfer Documents" see Section 8.1.3.

"UAW" means the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America.

I. CONVEYANCE OF THE ASSETS

1.1. Assets. Upon the terms and subject to the conditions of this Agreement, at Closing GM shall sell, transfer, assign, convey and deliver to AAM, and AAM shall purchase, accept and acquire from GM, all of GM's right, title and interest in and to all of the assets, properties and rights (contractual or otherwise), exclusively used in or relating to the Business of every kind, nature and description, real, personal and mixed, tangible and intangible, known or unknown, wherever located (collectively, the "Assets"), except for the Excluded Assets described in Section 1.2, including the following:

1.1.1. Real Property. Fee simple title to all real property owned by GM and utilized in the Business, consisting of all interests of GM in the real property described or shown on Exhibit 1.1.1 attached hereto and made a part hereof, or, in the case of the Tonawanda, New York facility, the real property to be transferred to AAM as set forth in Exhibit 7.4, together with all appurtenan

rights, buildings, fixtures and improvements situated thereon, thereunder or therein (collectively the "Real Property"). Specifically, the Real Property shall include (i) good, valid and marketable indefeasible fee simple absolute title to each of the Detroit and Three Rivers, Michigan, and Buffalo, New York, properties described or shown on Exhibit 1.1.1., as well as the Tonawanda, New York property, as described on Exhibit 7.4., in each case free and clear of all mortgages, pledges, liens, security interests, encumbrances and restrictions of any nature other than Permitted Encumbrances (as defined in Section 4.1.4.), and (ii) all of GM's right, title, estate and interests in and to the real property leases listed in Exhibit 1.1.2.C. A current land survey showing improvements and easements on the owned Real Property will be provided prior to date of the Closing as more fully set forth in Section 7.3.A. The parties acknowledge that due to lack of timely availability of definitive surveys for each property, the descriptions and drawings constituting Exhibit 1.1.1 may be imprecise. Accordingly, the parties agree that prior to Closing, with each party acting reasonably and in good faith, definitive legal descriptions for each property shall be prepared in the case of the Tonawanda property and finalized as to the Detroit, Three Rivers and Buffalo properties based on the final accepted surveys described in Section 7.3. The parties further agree that the Assets shall include a subleasehold estate in favor of AAM for up to three full floors of the so-called Towers Building in Saginaw, Michigan presently prime leased by GM from an independent third party prime landlord. An acceptable Saginaw Sublease shall be finalized as a condition to Closing as set forth in Section 8.1.9.

1.1.2. Personal Property.

A. All machinery and equipment, including material handling equipment, business machines, furniture, fixtures, tooling, testing equipment, in-factory vehicles, trucks, expense materials, model shop equipment, in-process containers, laboratory test equipment and fixtures (including those located at the Trilon test facility in Saginaw, Michigan), supplies, stores, hardware, office equipment, and other tangible personal property (including replacement, spare and maintenance parts designed for use with the Assets of the Business) owned by GM at the date of the Closing, and used exclusively in the current manufacture of products at or for the Business or

otherwise used exclusively in the Business, whether located on or near the Real Property or at the place of business of a vendor, including those items listed in Exhibit 1.1.2.A.

B. All records located at the Real Property or related exclusively to the Business as of the Closing, but excluding any records which are subject to any privilege of the nature described on Exhibit 1.1.2.B. which would be lost if such records were transferred to AAM, a list of which will be delivered to AAM prior to Closing and excluding all GM internal environmental audit reports other than those referred to in Article VI hereof, all environmental bulletins prepared by GM and provided to the Business prior to the Closing, EMIS software and documents and Purdue University course materials.

C. Subject to Article III, all claims and rights under contracts, agreements, contract rights, real and personal property leases, license agreements, franchise rights and agreements, policies, purchase and sales orders, quotations and executory commitments, instruments, guaranties, indemnifications, arrangements, and understandings of GM or any of its Affiliates (except EDS), whether oral or written, to which GM or any of its Affiliates (except EDS) is a party and relating exclusively to the Business, including the Contracts listed on Exhibit 1.1.2.C., but excluding the contracts listed on Exhibit 3.1.

D. All inventory, including raw materials, component parts, work-in-process, Non-Productive Inventory and finished products owned by GM as of the date of Closing relating exclusively to the Business and whether or not reflected as assets on the books of the Business, wherever such inventories may be located, other than Excess Inventory and Obsolete Inventory (collectively "Inventory").

1.1.3. Patents and Technical Information.

A. The patents listed in Exhibit 1.1.3, subject, however, to the reservation to GM or any of its Affiliates of a non-exclusive, non-transferable, royalty-free and irrevocable license for all purposes other than to make, have made, use or sell items which GM is obligated to purchase exclusively from AAM pursuant to the Component Supply Agreement, substantially the form of which is attached hereto as Exhibit 8.1.4.D. (the "Component Supply Agreement"), and for all purposes without limitation whatsoever upon expiration of the term or termination of the

Component Supply Agreement relative to any Family or Families (as defined in the Component Supply Agreement) of products.

B. A non-exclusive, royalty-free and irrevocable license under all patents owned by GM and its Affiliates (other than EDS) which pertain, but not primarily, to the design or manufacture of the products of the Business (including components, parts and accessories designed or manufactured by Affiliates, subsidiaries, divisions or units of GM other than the Business heretofore conducted by GM through its Saginaw Division) to make, have made, use and sell the products of the Business and any other products developed or otherwise acquired by AAM. Unless otherwise agreed to by GM in writing, the license granted by this clause shall be sublicensable to third parties only to make, have made, use, and/or sell to or on behalf of AAM.

C. All documented technical information ("Technical Documentation") currently in the files of the Business and owned by GM and its Affiliates (other than EDS) which pertains to the design or manufacture of the products of the Business (exclusive of components, parts and accessories designed or manufactured by Affiliates, subsidiaries, divisions or units of GM other than the Business as heretofore conducted by GM through its Saginaw Division); provided, however, that GM and its Affiliates may retain copies of such Technical Documentation and a non-exclusive, non-transferable, royalty-free and irrevocable license for all purposes other than to make, have made, use and sell items which GM is obligated to purchase exclusively from AAM pursuant to the Component Supply Agreement and for all purposes without limitation whatsoever upon expiration of the term or termination of the Component Supply Agreement relative to any Family or Families (as defined in the Component Supply Agreement) of products.

D. A non-exclusive, royalty-free and irrevocable license under all Technical Documentation currently in the files of or available to the Business and owned by GM and its Affiliates (other than EDS) which relates, but not primarily, to the design or manufacture of the products of the Business (including components, parts and accessories designed or manufactured by Affiliates, subsidiaries, divisions or units of GM other than the Business heretofore conducted by GM through its Saginaw Division) to use such Technical Documentation to make, have made, use and sell the products of the Business and any other products developed or otherwise acquired by

AAM. Unless otherwise agreed to by GM in writing, the license granted by this clause shall be sublicensable to third parties only to make, have made, use, and/or sell to or on behalf of AAM.

1.1.4. Government Licenses, Permits and Approvals. All franchises, licenses, permits, consents, authorizations, approvals and certificates of any regulatory, administrative or other government agency or body issued to GM and that are currently used or will be used at the time of the Closing for the purpose of carrying on the Business or that relate to the Assets, including those listed in Exhibit 1.1.4 (the "Permits"), to the extent that GM or any of its Affiliates has the power, authority or right to transfer or assign such licenses, permits or approvals.

1.1.5. Administrative Assets. All of the books and records of GM relating exclusively to the Business or the Assets (exclusive of any such item subject to a privilege, the nature of which is identified on Exhibit 1.1.2.B. and a list of which will be delivered to AAM prior to the date of Closing), including advertising and promotional materials, catalogues, price lists, correspondence, mailing lists, customer lists, vendor lists, photographs, production data, sales materials and records (regardless of the media on which they are stored), purchasing materials and records, personnel records of employees (subject to Section 1.2.1), labor relations records, manufacturing and quality control records and procedures, research and development files extant at the Real Property or located outside the Real Property if such files relate exclusively to the patents listed in Exhibit 1.1.3 or products manufactured by the Business, records, data and laboratory books, billing records, accounting records, sale order files, tool routings, labor routings, inspection processes and equipment lists, picture process sheets, process procedures, equipment prints and specifications, facility blueprints, service blueprints and plant layouts and environmental records and reports (excluding all GM internal environmental audit reports other than those referred to in Article VI hereof, all environmental bulletins prepared by GM and provided to the Business prior to the Closing, EMIS software and documents and Purdue University course materials). GM shall make such information available to AAM in machine readable form to the extent it is in GM's files in such form.

1.1.6. Legal Claims. All actions, causes of action, judgments and claims or demands exclusively in favor of the Business of whatever kind or description, but excluding any such

actions, causes of action, judgments, claims or demands which are the subject of litigation commenced by or against GM or a GM Affiliate prior to the date of Closing.

1.1.7. Emission Credits. All emission offsets and emission reduction credits which have accrued as a result of changes in operations or the shutdown of equipment or processes of the Business, to the extent such credits can be transferred by GM.

1.2. Excluded Assets. Notwithstanding anything to the contrary in Section 1.1 of this Agreement, the following rights, properties and assets ("Excluded Assets") shall not be included in the sale of Assets:

1.2.1. Personnel and Medical Records. All personnel and medical records of employees and retired former employees of GM who worked at any time for any reason at the Business for whom a record exists on the date of the Closing; provided, however, AAM will be provided the originals of all personnel and medical records of former GM employees who have accepted employment with AAM. Upon written request of GM, AAM shall promptly provide copies of any and all of these records to GM, at GM's sole expense. AAM hereby agrees to provide all GM employees who have accepted employment with AAM with written notice that AAM has requested GM to deliver such employees' personnel and medical records to AAM. If, within fourteen (14) days after receiving such notice, an employee notifies GM of his objection to having his medical records delivered to AAM, such employee's medical records may be retained by GM.

1.2.2. Dispositions. All of the inventories, products, rights, properties and assets of the Business which shall have been transferred or disposed of by GM prior to Closing in the ordinary course of business; provided that (i) none of the Real Property shall be transferred or encumbered without the prior written consent of AAM, and (ii) the Saginaw Prime Lease shall not be terminated or extended or amended in a manner which adversely affects the Saginaw Sublease without the prior written consent of AAM.

1.2.3. Trademarks. All GM trademarks, trade names and service marks, provided, however, AAM may sell or dispose of any existing Inventory of products bearing any GM trademark or related corporate name or trade name.

1.2.4. Third Party and GM Assets. All assets located at the Real Property owned by third parties, including EDS, listed in Exhibit 1.2.4, and that property of GM located at the Real Property and listed on Exhibit 1.2.4. Data processing hardware, software and know-how owned by EDS will be transferred, or the use thereof licensed, to AAM under the Agreement for Information Technology, attached hereto as Exhibit 8.1.4.I. Any property of GM listed on Exhibit 1.2.4. shall be provided by GM to AAM at no charge and GM agrees to keep such property in good working condition and to maintain such property at such levels as are reasonably necessary for AAM to provide to GM the services contemplated by the Component Supply Agreement.

1.2.5. Cash, Cash Equivalents and Accounts Receivable. All cash, bank accounts, cash equivalents and accounts receivable of the Business as of Closing.

1.2.6. Vehicles. All GM company vehicles, other than those listed on Exhibit 1.1.2.A.

1.2.7. Tax Refunds. Any refund of Taxes, or claim for refund of Taxes, of any kind relating to any period on or prior to the date of the Closing, and any deferred Tax assets of GM.

1.2.8. Litigation Matters. All actions, causes of action, judgments, claims or demands which are the subject of litigation commenced by or against GM or a GM Affiliate on or prior to the date of Closing.

1.2.9. EMIS. GM's environmental management information systems, computer software and related documentation.

1.2.10. Excluded Contracts. The contracts listed on Exhibit 3.1.

1.3. Exhibits. While the various Exhibits to this Agreement are intended to be complete, to the extent that any Assets are intended to be transferred to AAM pursuant to Section 1.1., or not retained by GM pursuant to Section 1.2., but do not appear on the applicable Exhibits, such Assets shall be the property of AAM. On and after the Closing, GM shall prepare, execute and deliver, at GM's expense, such further instruments of conveyance, sale, assignment or transfer, and shall take or cause to be taken such other or further action, as AAM shall reasonably request at any time or from time to time in order to perfect, confirm or evidence in AAM title to all or any part of the Assets or to consummate, in any other manner, the terms and conditions of this Agreement. Should it be determined after the date of the Closing that property, books, records or

other materials that were not intended to be transferred to AAM were transferred, AAM shall promptly return them at no cost to GM.

1.4. Nonassignable Permits, Licenses, Leases and Contracts.

1.4.1. Nonassignability. Except as otherwise provided in Section 1.4.3., to the extent that any contract or other agreement listed on Exhibit 1.1.2.C. or any license, permit or approval or any other contract, agreement or commitment included in the Assets is not capable of being assigned, transferred or subleased by the Closing without the consent or waiver of the issuer thereof or the other party thereto or any third party (including a governmental entity), or if such assignment, transfer or sublease or attempted assignment, transfer or sublease would constitute a breach thereof, or a violation of any law, decree, order, regulation or other governmental edict, this Agreement shall not constitute an assignment, transfer or sublease thereof, or an attempted assignment, transfer or sublease thereof, unless any such consent or waiver is obtained.

1.4.2. GM to Use All Reasonable Efforts. GM shall, at its sole expense, use all reasonable efforts, and AAM shall cooperate with GM, to obtain the consents and waivers and to resolve the impediments to assignment referred to in Section 1.4.1, and to obtain any other consents and waivers necessary to convey to AAM any other of the Assets; provided, however, that neither GM nor AAM shall be obligated to pay any consideration therefor to the party from whom the consent or waiver is requested.

1.4.3. Consents Required of GM or Its Affiliates. Without limiting the generality of Section 1.4.2, GM shall, at its sole expense, obtain the consents and waivers and resolve the impediments to any assignment referred to in Section 1.4.1 with respect to which GM or any Affiliate (other than EDS) of GM is the party from whom consent is required.

1.4.4. If Waivers or Consents Cannot be Obtained. To the extent that the consents and waivers referred to in Section 1.4.1 are not obtained by GM, or until the impediments to transfer referred to therein are resolved, GM shall, during the two (2) year period commencing with the Closing, use all reasonable efforts, at its expense, to (i) provide to AAM the benefits of any permit or approval and of any contract, license or other agreement, all as referred to in Section 1.4.1, to the extent involving the Business, (ii) cooperate in any reasonable and lawful arrangement designed

to provide such benefits to AAM, without incurring any financial obligation to AAM other than to provide such benefits, and (iii) enforce for the account of AAM any rights of GM arising from the licenses, permits and approvals and the contracts or other agreements referred to in Section 1.4.1 against such issuer thereof or other party or parties thereto (including the right to elect to terminate in accordance with the terms thereof on the advice of AAM). At the end of such two (2) year period, GM shall have no further obligations hereunder with respect to such licenses, permits and approvals and such contracts and other agreements and the failure to obtain any necessary consent or waiver with respect thereto shall not be a breach of this Agreement.

1.4.5. Obligation of AAM to Perform. To the extent that AAM is provided the benefits pursuant to Section 1.4.3 of any license, permit or approval or any contract or other agreement, AAM shall perform, on behalf of GM, for the benefit of the issuer thereof or the other party or parties thereto the obligations of GM thereunder or in connection therewith, but only to the extent that (i) such action by AAM would not result in any material default thereunder or in connection therewith, and (ii) such obligation would have been an obligation assumed by AAM pursuant to Article III but for the nonassignability or nontransferability thereof, and if AAM shall fail to perform to the extent required herein, GM, without waiving any rights or remedies that it may have under this Agreement, may suspend its performance under Section 1.4.3 in respect of the instrument which is the subject of such failure to perform unless and until such situation is remedied.

1.5. St. Catharine's Equipment. Title to and delivery of the St. Catharine's equipment shall occur on the date and in the manner set forth in the Option to Purchase Equipment Agreement to be executed by GM, the form of which is attached hereto as Exhibit 8.1.4.E. (the "St. Catherine's Option Agreement").

II. PURCHASE PRICE.

2.1. Purchase Price. The purchase price (the "Purchase Price") for the Assets shall be equal to the sum of:

(i) one hundred percent (100%) of the Book Value of the Inventory, (excluding Excess Inventory and Obsolete Inventory) less Seven Million Dollars ($7,000,000) (the "Inventory Purchase Price"), plus

designed to circumvent their intended responsibilities for the Transitioned Employees as set forth in Article V.

5.16 Miscellaneous.

5.16.1. Training.

A. AAM will continue to participate in joint activities through the UAAW-GM Human Resource Center in the same manner as provided prior to the date of the Closing through September 14, 1996. This includes funding levels, the funding approval process, and fuull participation in jointly developed and negotiated programs. Upon the expiration of the 1993 GM-UAW Agreement, AAM's funding obligations will be met by a payment to the UAW-GM Human Resource Center in an amount equal to the accumulated funding obligation incurred by AAM during the life of the 1993 GM-UAW Agreement. AAM's funding rate for overtime hours will bee based on the applicable GM corporate average overtime rate for U.S. markets. In the event and too the extent that AAM is required to pay any amounts determined by a rate in excess of GM's corporate average overtime rate for U.S. markets for such overtime hours, GM will promptly reimbbourse AAM for all such excess payments.

B. AAM's Joint Program Representatives will be appointed by the Director of the UAW-General Motors Department for the duration of the 1993 GM-UAW Agreement.

C. Individuals who are performing activities for the UAW-GM HRC wwill continue to do so for the duration of the 1993 GM-UAW Agreement unless notified to the contrarry by the Director of the UAW-GM Department.

VI. ENVIRONMENTAL MATTERS

6.1. GM's Environmental Reports/Post-Closing Matters.

6.1.1. Environmental Confidentiality Agreement. GM and AAM have entered inmto an Environmental Confidentiality Agreement regarding environmental matters which is dateed September 15, 1993, and is attached hereto as Exhibit 6.1.1. (the "ECA"). GM and AAAM agree that the terms and conditions of the ECA are hereby amended so as to apply through thee longest

indemnity period set forth in this Article VI, and shall take precedence over any provisions of this Article VI. inconsistent with the ECA.

6.1.2. Environmental Reports and Implementation of Remedial Plans.

A. Environmental Reports. Before or after the date of Closing, GM will cause Haley & Aldrich or another independent environmental consultant selected by GM to conduct an environmental assessment, which may be performed in phases both prior to and after the date of Closing, to determine the Pre-Closing Environmental Condition of the Real Property, the nature and scope of which assessment will be determined by GM in its sole discretion. GM will provide copies of the final reports of such assessment or phases thereof (the "Environmental Reports"), as they become available, to AAM under the terms of the ECA. The following Environmental Reports have been delivered to AAM by GM prior to the date of Closing:

PHASE I ENVIRONMENTAL SITE ASSESSMENTS

1.	Phase I Environmental Site Assessment Saginaw Division - Buffalo Plant ("Buffalo Plant") Buffalo, New York	by:	Haley & Aldrich, Inc. Rochesteer, New York File No. 70451-40 Decembeer 14, 1993
2.	Phase I Environmental Site Assessment Saginaw Division - Tonawanda Forge Plant Tonawanda, New York ("Tonawanda Plant")	by:	Haley & Aldrich, Inc. Rochesteer, New York File No. 70452-40 Decembeer 10, 1993
3.	Phase I Environmental Site Assessment Saginaw Prop Shaft Facility Three Rivers, Michigan	by:	Haley & Aldrich, Inc. Clevelanad, Ohio File No. 79010-40 Decembeer 10, 1993
4.	Phase I Environmental Site Assessment Saginaw Division - General Motors Corporation Detroit Gear & Axle Plant Hamtramck/Detroit, Michigan	by:	Haley & Aldrich, Inc. Clevelanad, Ohio File No. 79012-40 Decembeer 15, 1993
5.	Phase I Environmental Site Assessment Saginaw Division - Detroit Forge Facility Detroit, Michigan	by:	Haley & Aldrich, Inc. Clevelanad, Ohio File No. 79013-40 Decembeer 10, 1993

The Environmental Reports will include action plans for any subsequent investigation, cleanup, remediation, and/or other actions which GM determines, in accordance with Section 6.1.2.B., should be or must be conducted under specifically applicable Environmental Laws, as existing and

in effect as of the date of Closing, to address Pre-Closing Environmental Conditions (the "Remedial Plan(s)"); provided, however, that the Remedial Plan(s) will provide for an action plan relating to the area at the Buffalo Plant described in the Phase I Environmental Site Assessment for the Buffalo Plant as the "Inactive Hazardous Waste Site" (also referred to as "Parking Lot #4") taking into consideration the factors set forth in Section 6.1.2.B(ii) or, if GM enters into a consent order with the State of New York to address such area, as required under such order. Such actions may include reporting/discussing environmental issues related to the Real Property with appropriate governmental agencies. GM will, in its sole discretion, determine whether such reports/discussions should or must be initiated with such governmental agencies. Subject to Section 6.12.5, AAM retains the right to make reports to governmental agencies if and to the extent required by Environmental Laws.

B. Implementation of Remedial Plans. AAM acknowledges and agrees that in determining whether an action should be conducted or is required to be conducted under any specifically applicable Environmental Laws, as existing and in effect as of the date of Closing, under Section 6.1.2.A. or 6.1.3. to address Pre-Closing Environmental Conditions: (i) the decision as to whether any Pre-Closing Environmental Condition should be addressed or is required to be addressed under any specifically applicable Environmental Law will be in GM's sole discretion; and (ii) GM will, to the extent not prohibited by law, utilize the following factors in developing the particular action to be undertaken or in determining that no action will be undertaken: (a) specific requirements, if any, under applicable Environmental Laws, as existing and in effect as of the date of Closing; (b) technical feasibility of the action(s); (c) economic reasonableness of the action(s); (d) continued industrial use of the Real Property, as defined in Section 1.1.1, substantially similar to its use by GM before the date of Closing; and (e) human health and environmental risk-based factors, including, but not limited to: (1) likely exposure pathways consistent with continued industrial use of the Real Property, as defined in Section 1.1.1, substantially similar to its use by GM before the date of Closing; (2) typical simulated exposure distributions consistent with such exposures; (3) fate and transport characteristics; (4) local geology and hydrogeology; and (5) toxicity of the material(s) in question. Unless or to the extent required by law or agency directive,

GM will not propose any action which would significantly and materially impair the ability of AAM to produce products in the ordinary course of business as conducted by GM before the date of Closing without the prior consent of AAM, which consent will not be unreasonably withheld. Subject to events of Force Majeure, GM will use reasonable efforts to commence implementation of the Remedial Plans as expeditiously as practicable. AAM agrees that GM will have access to the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1, after the date of Closing consistent with Section 6.3 to undertake any activities under the Remedial Plans.

C. Agency Contact. Unless specifically requested by GM or, subject to Section 6.12.5, required by Environmental Laws, AAM acknowledges and agrees that AAAM will have no right to participate in any of GM's discussions/negotiations with any governmental agencies and will not independently engage in any discussions/negotiations with any governmental agencies regarding GM's activities hereunder, including, but not limited to, activities under any Remedial Plan or Compliance Plan, as hereafter defined, or any other issues related to the environmental condition of the Real Property, including, but not limited to, any Pre-Closing Environmental Conditions or Non-Compliance Matters, without the prior written consent of GM.

D. Notification of GM. AAM agrees that it will, as soon as practicable, notify GM of any contact, whether written, verbal, or in person, by or with any governmental agency, agency representative, or any other party regarding GM's activities at or any other issues related to the environmental condition or compliance status of the Real Property, as defined in Section 1.1.1, the Assets or the Business including, but not limited to, Pre-Closing Environmental Conditions, Non-Compliance Matters or activities under a Remedial Plan or as defined hereafter, a Compliance Plan. This provision will be effective through the end of the tenth year after the date of Closing, except that it will remain in effect thereafter as to any Remedial Plan or Compliance Plan which is still being implemented by GM at the end of such tenth year until the implementation of such plan has been completed.

E. Scope of GM's Obligations. Notwithstanding the foregoing, AAMM acknowledges and agrees that, except as specifically provided in Sections 6.1.2., 6.1.3., 6.2.1., 6.8., 6.9., 6.12.2. or 6.12.4., GM will have no obligation to undertake or conduct any cleanup,

remediation, and/or other actions with respect to any environmental conditions(s) or a non-compliance matter at the Real Property, as defined in Section 1.1.1, or concerning the Assets or Business, including, but not limited to, Pre-Closing Environmental Conditions or Non-Compliance Matters, or be liable to AAM or any third party for any such matters, and AAM will indemnify and defend GM therefrom in accordance with the provisions of Section 6.12.3.

F. AAM's Review of Remedial Plans. GM will provide AAM with a copy of the proposed Remedial Plan(s), as may be amended from time to time, subject to the terms of the ECA for undertaking and completing investigation, cleanup, remediation, and/or other actions to address Pre-Closing Environmental Conditions under Section 6.1.2.A. or 6.1.3. AAM will have the right to review and comment on such Remedial Plan(s) prior to implementation by GM. GM will cooperate reasonably with AAM in facilitating AAM's review of the Remedial Plan(s). GM will consider AAM's comments on the Remedial Plans and, if requested by AAM, discuss AAM's comments on the Remedial Plans with AAM. AAM will complete its review promptly, but in no event will AAM's review period exceed thirty (30) calendar days after AAM's receipt of any Remedial Plan unless additional time is reasonably required. Any requests for additional time must be made in writing within the review period; provided, however, that in the event that a shorter time for review is made necessary as a result of the need to obtain the approval of a governmental agency or as a result of a requirement of a governmental agency, then AAM's review time will be shortened to a period which is reasonable under the circumstances as specified by GM. If AAM does not object to the Remedial Plan(s) within the review period, GM will implement the Remedial Plan(s) as proposed or modified to address comments or objections from AAM consistent with this Section 6.1.2.F and as the Remedial Plan(s) may be amended from time to time. Notwithstanding any comments by AAM on the Remedial Plan(s), any objection to the Remedial Plan(s) by AAM must be timely and must be based solely upon a showing by AAM that an action(s) set forth in the Remedial Plan(s) will significantly and materially impair the ability of AAM to produce products in the ordinary course of business as conducted by GM before the date of Closing. If AAM makes such a showing, GM will modify its Remedial Plan(s) so as to not significantly and materially impair the ability of AAM to produce products in the ordinary course of business as conducted by GM before the date of

Closing. Notwithstanding and without limiting the foregoing, AAM may not object to any Remedial Plan: (i) because a different action(s) might take a shorter period of time, require less of a presence of GM or its representatives at the Real Property, as defined in Section 1.1.1., or be preferable to AAM; (ii) to require action(s) more stringent or materially different from that required under Environmental Laws, as existing and in effect as of the date of Closing; (iii) to require changes to an action(s) which was commenced or was substantially in place and/or negotiated prior to the date of Closing; or (iv) to require any modification or replacement of any personal property, building or fixture, or any process or material respecification where an alternative exists to address a Pre-Closing Environmental Condition. GM will have access to the Real Property, as defined in Section 1.1.1, after the date of Closing consistent with Section 6.3. to undertake any activities under the Remedial Plans. AAM will cooperate with GM in performing such post-closing activities.

G. AAM's Environmental Reports. AAM agrees to provide to GM, promptly upon request and during the longest indemnity period under this Article VI., copies of any environmental reports, data or assessments prepared or collected by or on behalf of AAM except those which are protected by the attorney-client privilege or the attorney-work product doctrine; provided , however, that no data relating to the quality, quantity or concentration of any emission,, discharge or environmental medium or any constituent or contamination thereof at the Real Property, as defined in Section 1.1.1., or relating to the Assets will be subject to any such privilege or doctrine.

6.1.3. Post-Closing Matters. If, during the first five (5) years after the date of Closing, AAM discovers a potential Pre-Closing Environmental Condition which was not a condition or matter identified, assessed or investigated in the Environmental Reports, GM will, with respect to such condition, take actions which GM determines should be conducted or must be conducted under specifically applicable Environmental Laws, as existing and in effect as of the date of Closing, so long as AAM establishes that such condition: (i) is significant and material; (ii) was in existence as of the date of Closing; and (iii) was not caused or significantly contributed to, significantly aggravated by, or significantly exacerbated by AAM. If AAM makes such a showing, such condition will be deemed a Pre-Closing Environmental Condition and GM will address such

condition under the provisions of Section 6.1.2. For purposes of Sections 6.1.3., 6.12.2. and 6.12.3, the condition will be deemed to be "significant and material" if the cost to remediate such condition, as reasonably determined or estimated using best engineering judgment, exceeds $15,000, exclusive of costs of investigation, evaluation, assessment, oversight, operation and maintenance, and any fines or penalties associated therewith. With respect to any significant and material Pre-Closing Environmental Condition subject to this Section 6.1.3. which becomes subject to a Remedial Plan under Section 6.1.2.B., GM will be responsible only for costs reasonably incurred by AAM with respect to investigation, evaluation and assessment with respect to such significant and material Pre-Closing Environmental Condition in excess of $50,000, and GM will reimburse AAM for any of its costs for investigation, evaluation and assessment in excess of $50,000; provided, however, that before AAM incurs costs in excess of $50,000 with respect to such investigation, evaluation and assessment, AAM will submit to GM for review and approval a work plan setting forth the nature of the investigative, evaluation and assessment work to be performed, an estimate using best engineering judgment of the cost thereof and the basis for undertaking such work. GM will expeditiously review and comment upon any such work plan and AAM will consider and, if reasonable, adopt GM's comments on the work plan. If, as modified, the work plan and the activities thereunder are reasonable in purpose, scope, cost, duration and extent, GM will not unreasonably withhold its approval of such work plan. With respect to GM's indemnification obligations under Section 6.12.2, GM will also be responsible only for costs with respect to each such significant and material Pre-Closing Environmental Condition in excess of $50,000 and AAM will be responsible for all such costs less than $50,000. The term "best engineering judgment" will mean the application of generally accepted engineering principles and cost estimation techniques to determine the cost of investigation, assessment, evaluation and performance of remediation of a Pre-Closing Environmental Condition based upon credible and verifiable facts, and confirmation and use of the factors set forth in Section 6.1.2.B.

6.2. GM's Environmental Compliance Audit(s); Environmental Permits.

6.2.1. Compliance Review.

A. Compliance Plans and Implementation. GM has retained Haley & Aldrich to conduct a review(s) of the compliance status of the operations of the Business with Environmental Laws, as existing and in effect as of the date of Closing. GM has provided AAM with a copy of the final report(s) of this compliance review(s) subject to the terms of the ECA (the "Environmental Compliance Audits") as described below:

ENVIRONMENTAL COMPLIANCE AUDITS

1.	Environmental Compliance Audit Saginaw Buffalo Plant Buffalo, New York	by:	Haley & Aldrich, Inc. Cleveland, Ohio File No. 70451-41 December 9, 1993
2.	Environmental Compliance Audit Saginaw Division - Tonawanda Forge Plant Tonawanda, New York	by:	Haley & Aldrich, Inc. Cleveland, Ohio File No. 70452-41 December 9, 1993
3.	Environmental Compliance Audit Saginaw Division - Prop Shaft Facility, Three Rivers, Michigan	by:	Haley & Aldrich, Inc. Cleveland, Ohio File No. 79010-41 December 10, 1993
4.	Environmental Compliance Audit Saginaw Division - Gear and Axle Facility Detroit, Michigan	by:	Haley & Aldrich, Inc. Cleveland, Ohio File No. 79012-41 December 8, 1993
5.	Environmental Compliance Audit Saginaw Division - Detroit Forge Facility Detroit, Michigan	by:	Haley & Aldrich, Inc. Cleveland, Ohio File No. 79013-41 December 10, 1993

GM will develop compliance plan(s) to address the matters to be set forth on Exhibit 6.2.1.A. before the date of Closing (which matters will be set forth based on the information contained in the * Environmental Compliance Audits) or which may be added after the date of the Closing as set forth below under Environmental Laws, as existing and in effect as of the date of Closing (the "Compliance Plans") to the extent such matters constitute Non-Compliance Matters or will address one or more of such Non-Compliance Matters in the manner set forth on Exhibit 6.2.1.A. AAM and GM agree that the matters to be set forth on Exhibit 6.2.1.A. based on the Environmental Compliance Audits will be determined prior to the date of the Closing, and they each agree that it will be a condition precedent to each of their respective obligations to consummate the

transactions set forth in this Agreement that such determinations are mutuaally satisfactory to AAM and GM. As soon as practicable, but in no event later than ninety (90) calendar days after the date of Closing, AAM may propose that additional matters be added to Exhibit 6.2.1.A. If GM reasonably determines that such matters were in existence as of the date of Closing and constituted a Non-Compliance Matter, such matters will be added to Exhibit 6.2.1.A. and will be addressed by GM in the Compliance Plans or in the manner set forth on Exhibit 6.2.1.A. GM will be responsible only for addressing the Non-Compliance Matters set forth in the Compliance Plans in the manner described in the Compliance Plans or in Exhibit 6.2.1.A. No Noon-Compliance Matter will constitute a Pre-Closing Environmental Condition for purposes of this Agreement or otherwise.

B. AAM's Review of Compliance Plans. GM will provide AAM with a copy of the proposed Compliance Plan(s), as may be amended from time to time, subject to the terms of the ECA. AAM will have the right to review and comment on such Compliance Plan(s) prior to implementation by GM. GM will cooperate reasonably with AAM in facilitating AAM's review of the Compliance Plan(s). GM will consider AAM's comments on the Compliance Plan(s) and, if requested by AAM, discuss AAM's comments on the Compliance Plan(s) with AAM. AAM will complete its review promptly, but in no event will AAM's review period exceed thirty (30) calendar days after AAM's receipt of any Compliance Plan unless additional time is reasonably required. Any requests for additional time must be made in writing within the review period; provided, however, that in the event that a shorter time for review is made necessary as a result of the need to obtain the approval of a governmental agency or as a result of a requirement of a governmental agency, then AAM's review time will be shortened to a period which is reasonable under the circumstances as specified by GM. If AAM does not object to the Compliance Plan(s) within the review period, GM will implement the Compliance Plan(s) as proposed or modified to address comments or objections from AAM consistent with this Section 6.2.1.B. and as the Compliance Plan(s) may be amended from time to time. Notwithstanding any comments by AAM on the Compliance Plan(s), any objection to the Compliance Plan(s) by AAM must be timely and must be based solely upon a showing by AAM that an action(s) set forth in the Compliance Plan(s) will ssignificantly and materially impair the ability of AAM to produce products in the ordinary course of business as

conducted by GM before the date of Closing. If AAM makes such a showing, GM will modify its Compliance Plan(s) so as to not significantly and materially impair the ability of AAM to produce products in the ordinary course of business as conducted by GM before the date of Closing. Notwithstanding and without limiting the foregoing, AAM may not object to any Compliance Plan: (i) because a different action might take a shorter period of time, require less of a presence of GM or its representatives at the Real Property, as defined in Section 1.1.1., or be preferable to AAM; (ii) to require action(s) more stringent or materially different from that required under Environmental Laws, as existing and in effect as of the date of Closing; (iii) to require changes to an action(s) which was commenced or was substantially in place and/or negotiated prior to the date of Closing; or (iv) to require any modification or replacement of any personal property, building or fixture, or any process or material respecification where an alternative exists to address a Non-Compliance Matter. GM will have access to the Real Property, as defined in Section 1.1.1., after the date of Closing consistent with Section 6.3. to undertake any activities under the Compliance Plans. AAM will cooperate with GM in performing such post-closing activities. Subject to events of Force Majeure, GM will use reasonable efforts to commence implementation of the Compliance Plans as expeditiously as practicable.

C. Except as set forth in Section 6.8. or 6.9., AAM will be solely responsible and liable for correcting and/or resolving any Non-Compliance Matter not set forth on Exhibit 6.2.1.A. and AAM will indemnify and defend GM in connection with any such matter in accordance with Section 6.12.3. GM will reasonably cooperate with AAM in AAM's efforts in addressing such matters.

6.2.2. Environmental Permits; Transfer. Set forth on Exhibit 6.2.2. are all of the environmental permits, licenses and authorizations identified by GM and issued with respect to the operations at the Real Property, as defined in Section 1.1.1. ("Environmental Permits"). Prior to the date of Closing, GM will take all actions reasonably required to effect the transfer to AAM of the Environmental Permits which can be transferred solely by notification to the applicable permitting authority. GM will use its best efforts to transfer to AAM all other Environmental Permits which require consent, review, approval or additional actions other than mere notification, and which may

be lawfully transferred to AAM. AAM will be solely responsible for: (i) obtaining or effecting the transfer of all Environmental Permits which are not transferable prior to the date of Closing under the two preceding sentences; and (ii) all other permits, licenses, authorizations and approvals required with respect to the Assets, the Real Property, as defined in Section 1.1.1, and the Business under Environmental Laws, as existing and in effect as of the date of Closing and thereafter, which have not been issued as of the date of Closing. GM and AAM agree to reasonably cooperate with one another in obtaining any consents, reviews or approvals necessary to transfer or obtain the Environmental Permits and in identifying, applying for and obtaining any permits, licenses, authorizations or approvals referred to in the preceding clause (ii) under Environmental Laws as existing and in effect as of the date of Closing. Any Environmental Permit transferred under this Section 6.2.2. will be considered to be an Asset of the Business transferred to AAM under this Agreement.

6.3. Post-Closing Access to Real Property; Documentation of Actions.

A. AAM acknowledges and agrees that, at any time after the date of Closing and, except where emergency conditions require otherwise, upon reasonable prior notice, GM and its representatives may come upon the Real Property, as defined in Section 1.1.1., to: (i) undertake any actions with respect to any Remedial Plan under Section 6.1.2. or 6.1.3.; (ii) undertake any actions with respect to any Compliance Plan under Section 6.2.1.; or (iii) undertake any actions under Sections 6.8., 6.9., 6.12.2. or 6.12.4. GM will keep AAM apprised of scheduled activities at the Real Property. AAM agrees to: (i) cooperate with GM and its representatives in obtaining any requisite governmental approvals, consents, authorizations, waivers, or permits which may be required in connection with Remedial Plans or Compliance Plans, and which will be obtained at GM's sole expense, to conduct such activities; (ii) not interfere with any actions instituted by GM before the date of Closing or under this Agreement or any Remedial Plan or Compliance Plan; (iii) do all things reasonably necessary and appropriate to allow GM to implement actions under this Agreement or any Remedial Plan or Compliance Plan; and (iv) exercise due care so as not to adversely affect the installation, operation, integrity or maintenance of any action or remedy existing or taken at or about the Real Property, as defined in Section 1.1.1., before the date of

Closing or thereafter under this Agreement or any Remedial Plan or Compliance Plan. Regarding activities undertaken pursuant to Sections 6.1.2., 6.1.3., 6.2.1., 6.8., 6.9., 6.12.2. or 6.12.4.B. and C., GM agrees to provide AAM with documentation detailing the actions taken by GM. AAM will cooperate with GM in performing such post-closing activities. GM will indemnify, defend and hold AAM harmless from any personal injury or property damage to a third party (including any AAM employee) or to AAM's property which occurs solely and directly as a result of GM's access to the Real Property pursuant to this Section 6.3. and which is due solely to GM's negligent act or omission; provided, however, no action taken or condition created as a result of GM's implementation of a Remedial Plan or a Compliance Plan will be subject to the foregoing indemnification. GM's indemnification obligation under the preceding sentence will not include any liability for consequential damages, special damages or incidental damages such as, by way of example and not limitation, loss of profits, loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligation, and the procedures specified in Section 6.12.2.A. through H. will apply to any such claim for indemnification.

B. In connection with GM's access to the Real Property, as defined in Section 1.1.1., for any purpose under this Article VI., both GM and AAM will exercise best efforts to avoid unreasonably interfering with the actions, business and operations of the other party on and associated with the Assets, the Real Property, as defined in Section 1.1.1., and the Business and the access of each party thereto. GM will abide by all applicable health and safety requirements of AAM while conducting actions on the Real Property, as defined in Section 1.1.1. GM or its agents may need access to services, including potable water, electric and telephone utilities, security and possibly wastewater treatment facilities, in connection with its activities on the Real Property, as defined in Section 1.1.1., subsequent to the date of Closing. AAM will provide GM or its agents with access to such utilities and facilities, on GM's reasonable request, for all purposes authorized or required under this Article VI. Such access will be utilized by GM or its agents in a reasonable manner which will minimize interference with AAM's operation of the Business. GM will reimburse AAM for GM's share of the reasonable cost of providing such services

upon receipt from AAM of reasonably satisfactory evidence of the cost for such services based on a proportional share mutually agreed to by the parties.

C. In the event that GM requires access to the Real Property, as defined in Section 1.1.1., relating to the Tonawanda Forge Plant to investigate any environmental condition or to undertake any remedial action with respect to or relating to the adjacent GM Powertrain Division Engine Plant, AAM will grant GM such access as is reasonably necessary and which is consistent with the access provided under Sections 6.3.A. and B.

6.4. Generator-Only Status. AAM acknowledges, warrants and agrees that it will not treat, store, or dispose of any hazardous substances, hazardous wastes, or toxic substances as those terms are defined under Environmental Laws, as may be amended from time to time, on, at or below the Real Property, as defined in Section 1.1.1., and will maintain generator-only status; provided, however, that AAM may: (i) temporarily or for a limited time period accumulate such substances or wastes as allowed under Environmental Laws without the necessity of a license or permit therefor; and (ii) use for lawful purposes and in a safe and environmentally appropriate and lawful manner commercial products which may contain such substances so long as and to the extent that AAM does not adversely affect or impact any property or operation of GM which may occur in the vicinity of the Real Property. AAM will use its best efforts to obtain new identification numbers which are required under Environmental Laws for hazardous waste management activities with respect to hazardous waste generated by the Business at the Real Property after the date of Closing. GM represents and warrants that no permit has been issued prior to the date of Closing with respect to the Business for operation of a hazardous waste treatment, storage or disposal facility under RCRA or any state law equivalent.

6.5. Restrictions on Use and Transfer.

A. AAM acknowledges, warrants and agrees that any contract, deed, transfer document or other instrument for transfer of any interest in, possession of, or right to use the whole or any part of the Real Property, as defined in Section 1.1.1., through sale, lease, license, easement or otherwise, including, but not limited to, any contract, deed, transfer document or other instrument for transfer of any such interest by and between GM and AAM in connection with

or pursuant to this Agreement, will incorporate the obligations of AAM and any subsequent user, occupant or transferee of the Real Property, as defined in Section 1.1.1., set forth in Sections 6.3., 6.4. and 6.5.B., and will restrict use of the Real Property, as defined in Section 1.1.1., from and after the date of Closing and, except as provided in the succeeding sentence, in perpetuity thereafter to industrial use and without access by members of the general public. Such restriction will allow for customary office and other uses ancillary to the principal use of the Real Property for industrial use, will provide that the restriction may be eliminated as an encumbrance upon the Real Property, as defined in Section 1.1.1., only with the written consent of GM, and will provide that it is directly enforceable by GM against AAM and any subsequent user, occupant or transferee of the Real Property, as defined in Section 1.1.1.

B. In the event AAM wishes to transfer all or any part of or any interest in the Real Property, as defined in Section 1.1.1., to a third party, it will require as a condition of any such transfer that the transferee covenant not to sue and release GM from all liability for any environmental matter or condition involving the Real Property, as defined in Section 1.1.1., and be bound by the provisions of this Article VI., other than AAM's indemnification obligations under Section 6.12.3 and assume the obligations of AAM under this Article VI., other than AAM's indemnification obligations under 6.12.3.; provided, however, that no such assumption will relieve AAM of its obligations under this Agreement. In the case of any transfer to an Affiliate, the Affiliate will be required as a condition thereof to be bound by all of the provisions of this Article VI. including AAM's indemnification obligations under this Article VI. and assume all of AAM's obligations under the Article VI. including AAM's indemnification obligations under this Article VI.; provided, however, that no transfer to an Affiliate will relieve AAM of its obligations under this Agreement. AAM will indemnify and defend GM against any claims asserted by such transferee against GM which are contrary to the provisions of this Article VI.

6.6. Maintenance of the Real Property. Except as set forth in any Remedial Plan or Compliance Plan, AAM acknowledges, warrants and agrees that, after the date of Closing, AAM will be solely responsible for maintenance of the Real Property, as defined in Section 1.1.1., and the Assets, including, but not limited to, any and all current or future structures, facilities, parking

lots, and storage areas, under contracts (including this Agreement), Environmental Laws, other laws and the common law.

6.7. Compliance With Environmental Laws. AAM acknowledges, warrants and agrees that: (i) after the date of Closing, AAM and any of AAM's successors, tenants, agents, employees, or contractors will comply in all material respects with all Environmental Laws applicable to the use of, operations at or occupancy of the Assets (including, but not limited to, the Real Property, as defined in Section 1.1.1., and any facilities, structures, parking lots, and storage areas thereon); and (ii) except as specifically otherwise provided in this Article VI., sole legal and financial responsibility for compliance with all Environmental Laws including hazardous waste management requirements, applicable to the use of, operations at or occupancy of the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1., will be that of AAM.

6.8. Responsibility for Transformers and Capacitors.

A. GM has informed AAM that the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1., may include, among other things, transformers and capacitors that may contain mono or polychlorinated biphenyl ("PCBs") dielectric or other materials. Prior to the date of Closing, GM will, at its cost, inspect identified PCB-containing transformers and provide to AAM a copy of the results of its inspection. GM will investigate and, if necessary, remediate any containment structure associated with a PCB-containing transformer determined during the course of such inspection to be leaking. Such remediation will be consistent with the provisions of the PCB Spill Cleanup Policy set forth at 40 CFR Part 761, Subpart G (1992). Either before or after the date of Closing, as the circumstances may require, GM will take such actions as may be required under TSCA so that GM can lawfully transfer such transformers to AAM as of or after the date of Closing.

B. After the date of Closing, and without limitation of the other obligations of AAM under this Agreement, AAM agrees to use, store, mark, handle, transport, distribute in commerce, and/or dispose of properly the PCB transformers and capacitors, including, but not limited to, the PCB materials contained therein, in compliance with Environmental Laws and other laws.

C. Other than as provided in Sections 6.8.A. and 6.8.D., AAM agrees that GM will have no further obligation or liability with regard to such PCB and PCB containing equipment or material, including, but not limited to, transformers and capacitors, and the PCB materials contained therein or any release thereof, after the date of Closing, and that AAM will be and remain solely liable and responsible for the proper handling, marking, transportation, distribution in commerce, storage, use, maintenance, repair, or disposal of such transformers and capacitors, including the PCB fluids contained therein or any release thereof, under contract (including this Agreement), Environmental Laws, other laws, and the common law, and AAM will indemnify and defend GM therefrom in accordance with Section 6.12.3.

D. AAM acknowledges that an exterior building siding or cladding material known as "Galbestos" may be in use at the Tonawanda Plant and that such use may not presently be subject to a use authorization under 40 CFR Part 761 (1992). With respect to such material, GM agrees that, if at any time within the first five (5) years after the date of Closing it is expressly determined by a regulation or final order of a governmental agency with jurisdiction in the matter duly promulgated or issued under TSCA and taking effect within such time period that such material may not lawfully remain in use, then GM will reimburse AAM for its reasonable and actual costs and expenses incurred in the removal and disposal of such material in the manner then required by TSCA, and in accordance with the plan and cost estimate approved by GM, and AAM will be solely responsible for all costs and expenses associated with the replacement of such material. If any such final order is issued, AAM will, if requested by GM, prosecute and perfect an appeal of such order or any affirmance thereof in the manner prescribed by GM and with counsel of GM's choice, and GM will in such event pay the cost and expenses incurred by AAM to appeal any such order or affirmance thereof; provided, however, that if GM has requested that AAM appeal such order and the appeal thereof is ongoing at the end of the five (5) year period set forth above, GM's obligations under this subsection will continue until the appeal has been finally determined. Prior to any such removal and disposal, AAM will submit to GM for its approval, a plan and cost estimate for effecting such removal and disposal. Any removal, disposal or replacement costs incurred by AAM with respect to such material in the ordinary course of business or not mandated

by the regulation or order of a governmental agency promulgated or issued under TSCA after the date of Closing will be the sole responsibility of AAM and AAM will indemnify and defend GM therefrom in accordance with Section 6.12.3.

6.9. Responsibility for Asbestos.

A. GM has informed AAM that the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1., may include, among other things, asbestos insulation and other asbestos-containing material ("ACM"). Either before or after the date of Closing, GM will, at its sole cost, engage an independent consulting firm to conduct a survey of all reasonably accessible ACM at the Real Property, as defined in Section 1.1.1., and to prepare a written report of its findings. Such survey will take into account the location, condition, friability, accessibility, and frequency and manner of use of and exposure to such ACM. Upon completion of the survey, GM will provide a copy thereof to AAM and agrees to remove or, at its option, repair only friable ACM identified in the survey which is excessively damaged and accessible and which poses an immediate threat of release to the general worker population.

B. Except as provided in Section 6.9.A. and 6.9.C., after the date of Closing, and without limitation of the other obligations of AAM under this Agreement, AAM agrees that GM will have no further obligation or liability with regard to the presence, maintenance, handling, repair, use, removal, release, storage, or disposal of any ACM, and that AAM will be and remain solely liable and responsible for such activities under contract (including this Agreement), Environmental Laws, other laws, and the common law, and AAM will indemnify and defend GM therefrom in accordance with Section 6.12.3.

C. Liability for Employee Asbestos-Related Claims will be borne by the parties as follows. AAM's portion of such liability will be equal to an amount determined by multiplying the aggregate liability for such claim by a fraction, the numerator of which fraction will be the period of employment of the claimant with AAM at the facility in question on and after the date of Closing, and the denominator of such fraction will be the total period of employment of such claimant with GM at the facility in question before the date of Closing and with AAM at the facility in question on and after the date of Closing. That portion of the aggregate liability for such claim

not allocated to AAM as provided in the preceding sentence will be GM's responsibility. For purposes of this Section 6.9.C., the term "Employee Asbestos-Related Claim" will mean lawsuits and claims brought or made by or on behalf of employees or former employees of the Business for personal injuries arising, or alleged to have arisen, from exposure to asbestos fibers, either before or after the Closing, on the Real Property, as defined in Section 1.1.1., including all claims for compensation pursuant to applicable worker's compensation or related or similar legislation.

6.10. No Arrangement for Disposal. GM and AAM acknowledge that the transactions contemplated by this Agreement constitute a sale and transfer of assets in the ordinary course of business and are not intended in any way, nor will they be deemed to be, an arrangement for treatment, storage or disposal of any of the Assets or any substances or materials contained therein. AAM agrees that GM will not have any liability under any Environmental Law by virtue of such transfer alone.

6.11. GM's Inspection Rights. AAM acknowledges and agrees that GM has the right, at any time and at least semi-annually, and, except where emergency conditions require otherwise, upon reasonable notice, during the period of GM's indemnity obligations set forth in this Article VI., to inspect or audit the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1., from time to time, to observe AAM's or its tenant's, agent's, employee's, or contractor's compliance with Environmental Laws and the provisions of this Agreement. During such inspection or audit, AAM agrees to provide all documents and information reasonably requested by GM and provide to GM the opportunity to interview AAM's employees relating to environmental matters, except such documents and information as are protected by the attorney-client privilege or attorney-work product doctrine; provided, however, that no data relating to the quality, quantity or concentration of any emission, discharge or environmental medium or any constituent or contamination thereof at the Real Property, as defined in Section 1.1.1., or relating to the Assets will be subject to any such privilege or doctrine. Any such inspection or audit, including employee interviews and assistance, will be coordinated with management personnel responsible for environmental compliance and will not unreasonably interfere with AAM's continued operation of the Business. This right of inspection does not constitute a duty on GM's

part to so inspect and in no event relieves AAM of any obligations under this Agreement or under the law.

6.12. Condition of Assets; Indemnification Obligations.

6.12.1. Condition of Assets.

A. AAM acknowledges, warrants and agrees that, prior to the date of Closing, it has had the opportunity to and has examined and investigated the nature, environmental condition and compliance status of the Assets, including, but not limited to, the Real Property, as defined in Section 1.1.1., and the Business. Except as set forth in Section 6.4., neither GM, nor any agent, attorney, employee, or representative of GM, has made any representation whatsoever regarding the nature, environmental condition or compliance status of the Assets, the Real Property, as defined in Section 1.1.1., or the Business by GM to AAM or any part thereof and that AAM in executing, delivering, and/or performing this Agreement has not relied upon any statement and/or information (including, but not limited to, any Environmental Report or Environmental Compliance Audit), to whomsoever made or given directly, orally or in writing, by any individual, firm, or corporation. The parties assume that the Environmental Reports and the Environmental Compliance audits do and will in the future accurately describe the condition of the soil, groundwater and surface water at the Real Property and the environmental compliance status of the Assets and the Business. Neither GM nor AAM represents or warrants the accuracy or completeness of the Environmental Reports or the Environmental Compliance Audits, and AAM has entered into this Agreement based solely upon its own inspection, evaluation, review and analysis of such reports and audits and its rights under Sections 6.1.3. and 6.2.1.A.

B. AAM acknowledges and agrees that, except as otherwise provided in this Article VI., it is purchasing the Assets, the Real Property, as defined in Section 1.1.1., and the Business in an "as is, where is" condition as of the date of Closing and without any right of action with respect to environmental matters or conditions against GM under contract (including this Agreement), Environmental Laws, other laws, the common law or in equity. Except for actions arising under Sections 6.8., 6.9., 6.12.2., 6.12.3.B.2. or 6.12.4., AAM hereby expressly releases and covenants not to sue GM with respect to environmental matters or conditions regarding the

Assets, the Real Property, as defined in Section 1.1.1, or the Business, whether existing before or after the date of Closing, including, but not limited to, environmental matters arising from or related to the presence of PCBs, asbestos, wood floor blocks, ceiling and floor tiles, buildings, refractory brick and any substances, materials or structures at or about the Real Property, as defined in Section 1.1.1., or in or about the Assets.

6.12.2. GM's Indemnification. GM agrees that for a period of five (5) years after the date of Closing and in accordance with the following terms and conditions, GM will indemnify, defend, and hold AAM harmless from and against any liabilities, damages, penalties, or fines, including, without limitation, reasonable attorney's fees, (but in no event will GM's agreement to indemnify AAM include consequential, special or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligations) to which AAM may be subjected as a result of an action, suit, complaint, formal notice of probable claim, or proceeding brought by a governmental agency or other third party (hereinafter "Claim"), but only to the extent such Claim is based upon a Pre-Closing Environmental Condition described in any Environmental Report or a significant and material Pre-Closing Environmental Condition which: (i) constitutes a violation of a specifically applicable Environmental Law, as existing and in effect as of the date of Closing, or (ii) results in an investigation or remediation obligation or liability being imposed under Environmental Laws, as existing and in effect as of the date of Closing. GM agrees that for the period commencing with the sixth year after the date of Closing and continuing through the tenth year after the date of Closing, and in accordance with the following terms and conditions, GM will indemnify, defend and hold AAM harmless from and against any liabilities, damages, penalties, or fines, including, without limitation, reasonable attorney's fees, (but in no event will GM's agreement to indemnify AAM include consequential damages, special damages or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligations) to

which AAM may be subjected as a result of any Claim, but only if and to the extent such Claim is based upon a Pre-Closing Environmental Condition which is disclosed in any Environmental Report or is a significant and material Pre-Closing Environmental Condition which arises under Section 6.1.3., and AAM establishes that: (i) AAM did not cause or significantly contribute to, significantly aggravate or significantly exacerbate such Pre-Closing Environmental Condition; (ii) AAM has substantially complied with and met in all material respects all of its obligations under this Article VI.; and (iii) GM's determination regarding if and to what extent actions taken or not taken with respect to any such Pre-Closing Environmental Condition was, and resulted in a condition that was, inconsistent with Environmental Laws, as existing and in effect as of the date of Closing. The foregoing indemnities will be effective as follows:

A. AAM agrees that it will promptly, but in no event later than thirty (30) calendar days from the date of its discovery of facts which are reasonably likely to give rise to a demand by it for indemnification under this Article VI. or relating to any such Claim, notify GM in writing of such facts and potential Claim. AAM's written notice will specify in detail the particular facts and Environmental Law involved.

B. AAM and GM will use best efforts to resolve promptly any disputes regarding any Claim hereunder.

C. GM's indemnification obligations hereunder will be apportioned to the extent that a Claim results from, or GM's expenses are materially increased by, AAM's failure to provide timely notice as required under Section 6.12.2.A. No indemnification obligation exists if, without the prior written approval of GM, AAM has negotiated and/or agreed with a third party to conduct investigation, remediation, or other actions with respect to a Claim or to settle a Claim.

D. After notification is given under Section 6.12.2.A., GM will be entitled, but not obligated, to assume the defense or settlement of any Claim or to participate in any negotiations or proceedings to settle or otherwise eliminate any Claim. If GM fails to elect in writing within thirty (30) calendar days after the notification referred to above to assume the defense or settlement, AAM may engage counsel to defend, settle or otherwise dispose of such Claim.

E. In cases where GM has assumed the defense, settlement or disposition of a Claim, GM will be entitled to assume the defense or settlement thereof with counsel of its own choosing, and will be entitled to settle, compromise, decline to appeal, or otherwise dispose of the Claim without the consent or agreement of AAM; provided, however, that in such event GM shall obtain from the claimant a release in favor of AAM from all liability with respect to such Claim.

F. In any case in which GM assumes the defense or settlement of a Claim and GM, in its sole discretion, so consents, AAM will be entitled to continue to participate at its own cost in any such action or proceeding or in any negotiations or proceedings to settle or otherwise eliminate any Claim for which indemnification is being sought and will have the right to employ its own counsel in any such case, but the fees and expenses of such counsel will be at the expense of AAM; otherwise, AAM will have no such right to participate in any such action or proceeding. In no event will GM be liable to any indemnified party for the cost of employing or using in-house legal counsel regardless of whether GM has, or has not, assumed the defense or settlement of such Claim.

G. In the event indemnification is requested, GM and its representatives and agents will have access to the premises, books and records of the indemnified party or parties seeking such indemnification to the extent reasonably necessary to assist it in defending or settling any Claim; provided, however, that such access will be conducted in such manner so as not to interfere unreasonably with the operation of the Business.

H. Until the expiration of the indemnification period under Section 6.12.2.I., AAM agrees to retain all documents with respect to all matters as to which indemnity may be sought under this Article VI. Before disposing of or otherwise destroying any such documents, AAM will give reasonable notice to such effect and deliver to GM, at GM's expense and upon its request, a copy of any such documents. In addition, each party to this Agreement agrees to use its reasonable efforts to cause its employees to cooperate with and assist GM in connection with any Claim for which indemnity is sought by AAM hereunder.

I. Upon expiration of the ten (10) year period after the date of Closing, the indemnification requirements of this Section 6.12.2. will terminate and AAM will have no right of

action against GM for environmental matters or conditions relating to the Real Property, as defined in Section 1.1.1., the Assets or the Business under contract (including this Agreement), Environmental Laws, other laws, or the common law or in equity; provided, however, that : (i) in the event a Claim is asserted before the end of such ten (10) year period, the obligation of GM to indemnify and defend AAM will continue, but only as to such Claim; and (ii) in the event GM has not completed a Remedial Plan before the end of such ten (10) year period, GM will nevertheless complete the actions required under such Remedial Plan.

J. If GM, in addressing a Pre-Closing Environmental Condition under Section 6.1.2 or 6.1.3 or in defending or resolving any Claim as to which it has indemnification responsibility under this Article VI., remediates or incurs costs or damages with respect to a matter for which a third party may be responsible or liable, AAM agrees to cooperate with GM in pursuing any claim against such third party and will use its best efforts to assist GM and to enable GM to legally assert such claim against such third party and to recover GM's costs and damages against such third party including, but not limited to, acting as the real party in interest and assigning AAM's rights or cause of action against any such third party relating to such claim or the proceeds thereof to GM. With respect to any such action, GM agrees to defend, indemnify and hold AAM harmless from and against any cost or liability to which AAM may be subjected as a result of providing such assistance.

6.12.3. AAM's Indemnification.

A. AAM will indemnify, defend and hold GM harmless from and against any Claims, including, without limitation, reasonable attorney's fees, (but in no event will AAM's agreement to indemnify GM include consequential, special or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matters as to which AAM has accepted its defense and indemnity obligations) asserted against or to which GM may be subjected and which are caused by, relate to or arise in connection with: (i) any breach by AAM of any warranty or agreement by AAM under this Article VI.; (ii) any violation by AAM of any Environmental Law with respect to the Assets, the Real Property, as defined in Section 1.1.1., or the Business; (iii) any

matter with respect to which AAM is obligated to indemnify GM under Section 6.1.2.E., 6.2.1.C., 6.5.B., 6.8.C., 6.8.D., 6.9.B., 6.9.C. or 6.16.4.A.; and (iv) except as provided in Section 6.12.3.B., any matter as to which GM is not obligated to indemnify AAM under Section 6.12.2. or 6.12.4., whether due to the passage of time beyond the applicable indemnity period, the fact that such matter is not within the scope of GM's indemnification obligations... or otherwise, including, but not limited to, Claims based on GM's actions, omissions or status, whether negligent or otherwise; Claims relating to a Pre-Closing Environmental Condition arising during the second five (5) year period after the date of Closing which was significantly contributed to or significantly aggravated or significantly exacerbated by AAM; or Claims which were not discovered by AAM within five (5) years after the date of Closing. AAM's indemnification obligations will exist in perpetuity and will not be affected in any way by, or be merged into, the transactions contemplated under this Agreement, and all representations and warranties of AAM in this Article VI. will also survive the Closing.

B. 1. With respect to any condition or matter which was not identified, assessed or investigated in the Environmental Reports and any condition or matter which is not a significant and material Pre-Closing Environmental Condition subject to Section 6.1.3, AAM's obligation to indemnify and defend GM under Section 6.12.3.A (iv) will be unconditional and absolute.

2. With respect to any Pre-Closing Environmental Condition identified, assessed or investigated in the Environmental Reports and any condition or matter which constitutes a significant and material Pre-Closing Environmental Condition subject to Section 6.1.3, AAM will defend and indemnify GM against any Claim relating thereto and asserted against GM when and if it is determined by a final, non-appealable determination of a court or agency within jurisdiction over the matter that GM addressed such condition or matter in such a manner that the result was consistent with Environmental Laws, as existing and in effect as of the date of Closing, and will thereupon reimburse GM for all of GM's costs, including costs of defense, incurred with respect to such Claim prior to such determination. The parties agree that, solely with respect to Claims arising under this Section 6.12.3.B.2., either of them will have the right to seek a

declaratory judgment at any time (subject to any applicable statute of limitations) following the assertion of such Claims for the purpose of determining whether GM addressed the Pre-Closing Environmental Condition which is the subject of the Claim in such a manner that the result was consistent with Environmental laws as existing and in effect as of the date of Closing.

3. Notwithstanding anything to the contrary elsewhere in this Section 6.12.3., AAM will be solely responsible for any cost, expense, liability, charge or assessment arising from or in connection with: (i) the enactment or taking effect of any Environmental Law after the date of Closing; or (ii) the amendment or modification of or change in any Environmental Law, as existing and in effect as of the date of Closing.

C. The foregoing indemnities will be effective as follows:

1. GM agrees that it will promptly, but in no event later than thirty (30) calendar days from the date of its discovery of facts which are reasonably likely to give rise to a demand by it for indemnification under this Article VI. or relating to any such Claim, notify AAM in writing of such facts and potential Claim. GM's written notice will specify in detail the particular facts and Environmental Law involved.

2. GM and AAM will use best efforts to resolve promptly any disputes regarding any Claim hereunder.

3. AAM's indemnification obligations hereunder will be apportioned to the extent that a Claim results from, or AAM's expenses are materially increased by, GM's failure to provide timely notice as required under Section 6.12.3.C.1. No indemnification obligation exists if, without the prior written approval of AAM, GM has negotiated and/or agreed with a third party to conduct investigation, remediation, or other actions with respect to a Claim or to settle a Claim.

4. After notification is given under Section 6.12.3.C.1., AAM will be entitled, but not obligated, to assume the defense or settlement of any Claim or to participate in any negotiations or proceedings to settle or otherwise eliminate any Claim. If AAM fails to elect in writing within thirty (30) calendar days after the notification referred to above to assume the defense or settlement, GM may engage counsel to defend, settle or otherwise dispose of such Claim.

5. In cases where AAM has assumed the defense, settlement or disposition of a Claim, AAM will be entitled to assume the defense or settlement thereof with counsel of its own choosing, and will be entitled to settle, compromise, decline to appeal, or otherwise dispose of the Claim without the consent or agreement of GM; provided, however, that in such event AAM shall obtain from the claimant a release in favor of GM from all liability with respect to such Claim.

6. In any case in which AAM assumes the defense or settlement of a Claim and AAM, in its sole discretion, so consents, GM will be entitled to continue to participate at its own cost in any such action or proceeding or in any negotiations or proceedings to settle or otherwise eliminate any Claim for which indemnification is being sought and will have the right to employ its own counsel in any such case, but the fees and expenses of such counsel will be at the expense of GM; otherwise, GM will have no such right to participate in any such action or proceeding. In no event will AAM be liable to any indemnified party for the cost of employing or using in-house legal counsel regardless of whether AAM has, or has not, assumed the defense or settlement of such Claim.

7. In the event indemnification is requested, AAM and its representatives and agents will have access to the premises, books and records of the indemnified party or parties seeking such indemnification to the extent reasonably necessary to assist it in defending or settling any Claim; provided, however, that such access will be conducted in such manner so as not to interfere unreasonably with GM's operations. In addition, GM will use its reasonable efforts to cause its employees to cooperate with and assist AAM in connection with any Claim for which indemnity is sought by GM hereunder.

8. If a Claim relates to a matter as to which both parties have indemnity obligations under this Article VI., then each party will be responsible for its proportionate share of the Claim unless otherwise specifically provided herein. The proportionate shares of the parties will be determined by the parties as soon as reasonably practicable based upon a determination of each party's relative contribution to the condition considering the respective chemical quantities and qualities of the contamination contributed or remaining after

remediation and the time periods involved. If the party against whom the Claim is asserted determines that the other party's potential liability with respect to such Claim is de minimis, no claim will be asserted against the other party with respect to such Claim. If the parties are jointly responsible for the Claim, the parties will jointly manage and respond to such Claim (unless otherwise agreed) and will agree upon a mutually acceptable resolution of such Claim, including any cleanup, remediation and/or other actions required in response to such Claim. The parties will use best efforts, good faith and sound and accepted engineering judgment in making the foregoing determinations. Where GM is solely responsible for a Claim or where the parties are jointly responsible for resolution of a Claim, any remediation, cleanup and/or other actions proposed by the parties to resolve such Claim must be consistent with the factors set forth in Section 6.1.2.B.

6.12.4. GM's Additional Indemnities.

A. GM agrees to indemnify, defend and hold AAM harmless from and against any Claims, including, without limitation, reasonable attorney's fees, (but in no event will GM's agreement to indemnify AAM include consequential, special or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligations) to which AAM may be subjected as a result of any off-site treatment, off-site storage, off-site transportation, or off-site disposal of hazardous wastes, hazardous substances, or toxic substances, as those terms are defined under Environmental Laws, as existing and in effect as of the date of Closing, to or at a facility intended by GM to be used for such purposes and such wastes or substances were generated by GM at the Real Property or in connection with the operation of the Business on or prior to the date of Closing or after the date of Closing in connection with the implementation by GM of any Remedial Plan. This indemnity will remain in effect in perpetuity. With respect to any written communication from a governmental agency relating to any off-site treatment, off-site storage, off-site transportation or off-site disposal of hazardous wastes, hazardous substances or toxic substances by GM relating to operation of the Business prior to the date of Closing, AAM will promptly forward any such communication to GM.

B. GM agrees that, for a period of one (1) year after the date of Closing, GM will indemnify, defend and hold AAM harmless from and against any Claims, including, without limitation, reasonable attorney's fees, (but in no event will GM's agreement to indemnify AAM include consequential, special or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligations) relating to alleged violations of Environmental Laws, as existing and in effect as of the date of Closing, to the extent such Claims are based solely upon compliance monitoring reports, data, or other such submissions or disclosures made to a federal, state, or local agency prior to the date of Closing. AAM agrees to cooperate reasonably with GM in any actions which are reasonably required to resolve any such Claim. GM will have a right of access to the Real Property, as defined in Section 1.1.1., consistent with the provisions of Section 6.3. and will provide AAM with documentation describing the actions taken to resolve any such Claim.

C. GM agrees that it will indemnify, defend, and hold AAM harmless from and against any Claim, including without limitation, reasonable attorney's fees, (but in no event will GM's agreement to indemnify AAM include consequential, special or incidental damages such as, by way of example and not limitation, loss of profits or loss of business opportunity, or any attorney's or consultant's fees or other expenses as to any matter as to which GM has accepted its defense and indemnity obligations) relating to any Non-Compliance Matter set forth on Exhibit 6.2.1.A. (as compiled in accordance with Section 6.2.1.A.), but only to the extent such Claim seeks compliance with an Environmental Law, as existing and in effect as of the date of Closing, and/or recovery of fines, penalties or other statutory sanctions or impositions for any alleged non-compliance therewith and, with respect to each such Non-Compliance Matter, such Claim is asserted after the date of Closing and within one (1) year after the date such Non-Compliance Matter was remedied or eliminated in the manner set forth in a Compliance Plan or Exhibit 6.1.2.A., as verified by an independent environmental consultant retained by GM. GM will give AAM notice of any final report by such consultant setting forth its verification that such Non-

Compliance Matter has been remedied or eliminated in the matter set forth in a Compliance Plaan or Exhibit 6.1.2.A.

D. The procedures set forth in Sections 6.12.2.A. through H. will apply to any Claim for which Indemnification is sought under Section 6.12.4.A., B., or C. If a Claim is asserted which is covered by Section 6.12.4.B. or C. within the indemnification period provided therein for such Claim, then GM's defense and indemnity obligations will continue, beyond expiration of the indemnification period but only with respect to such Claim.

6.12.5. No Third Party Claims Initiation.

A. Except if and to the extent required by Environmental Laws and subject to Section 6.12.5.B., AAM acknowledges, warrants and agrees that it will not initiate any action with any third party, including any governmental agency, which could reasonably be expected to lead to a Claim.

B. If AAM believes that a disclosure, communication, or report is required to be made under any Environmental Law relating to any Pre-Closing Environmental Condition, Non-Compliance Matter, Remedial Plan or Compliance Plan, it will give GM prior written notice of the basis for that belief, including a reference to the specific Environmental Law which AAM believes requires such disclosure, communication or report, and the nature and content of the proposed disclosure, communication or report AAM believes is required to be made. In all cases, AAM will use its best efforts to avoid disclosure of matters related to GM's activities under this Agreement. AAM will afford GM a reasonable opportunity to evaluate whether it concurs with AAM's belief. Subject to Section 6.12.5.C., AAM will not make such disclosure, communication or report unless GM has consented thereto, which consent will not be unreasonably withheld.

C. Nothing herein will constrain AAM's ability to: (i) comply with any specific requirements under Environmental Laws which would require disclosure of information about the environmental condition of the Business, the Real Property, as defined in Section 1.1.1., or the Assets; (ii) disclose information necessary to operate the Business in the ordinary course of business; or (iii) comply with any specific requirements under any other applicable laws,

regulations, ordinances, rules, orders, codes or permits which would require disclosure of such information in connection with the operation of the Business.

D. Until the expiration of the indemnification period under Section 6.12.2.I., AAM will notify GM of any portions of significant submittal(s) or disclosure(s) to the extent they relate to the environmental condition of the Business, the Real Property, as defined in Section 1.1.1., or the Assets to any governmental agency or other third party it intends to make under Section 6.12.5.C. GM will have a reasonable time period in which to conduct its review of such submittal(s) or disclosure(s). AAM will, if reasonably and timely requested by GM, incorporate GM's requests to modify such disclosure. AAM will use its best efforts to avoid unnecessarily disclosing information about the environmental condition of the Business, the Real Property, as defined under Section 1.1.1, or the Assets. AAM will have the right, however, to make such disclosures AAM reasonably deems necessary to fulfill its obligations under Environmental Laws, other applicable laws, or to operate the Business in the ordinary course of business as provided in Section 6.12.5.C., taking into account GM's reasonable requests regarding such disclosures.

6.13. Dispute Resolution. The parties will use good faith, best efforts, and sound and accepted engineering judgment in making all determinations under this Article VI. In the event of a dispute or disagreement under this Article VI., the parties will consult in good faith with each other and will use best efforts to resolve the matter. It is the express intent of the parties that any such disputes or disagreements will be resolved through negotiation between the parties or, if mutually agreeable in each party's sole discretion, through a form of alternative dispute resolution; it being understood and agreed, however, that alternative dispute resolution and litigation hereunder will be viewed as the last resort.

6.14. Exclusive Remedies. The rights and obligations provided in this Article VI. will be the exclusive remedies of the parties with respect to environmental matters and will be in lieu of, and not in addition to, all other remedies which may exist in law, equity or under any other contract.

6.15. Non-assignability of Indemnities. The parties respective indemnification rights in this Article VI. are personal to each of them and may not be assigned to any successor, assignee,

or any other third party without the prior written consent of the other party; provided, however, that AAM may assign such indemnities to any lender in the event such lender becomes a successor through foreclosure (or a deed in lieu thereof) to AAM's interests under this Agreement if GM consents to such assignment, which consent will not be unreasonably withheld.

6.16. Miscellaneous.

6.16.1. Exclusivity. Notwithstanding any provisions of this Agreement to the contrary and except as provided in the ECA, this Article VI. will exclusively govern with respect to all matters related to Environmental Laws and the environmental conditions of the Assets, Real Property and the Business. All of the representations, warranties, covenants, agreements and indemnities set forth in this Agreement, the Indemnity Agreement or any other agreement between the parties with respect to the transactions contemplated by this Agreement, other than those specifically set forth in this Article VI. and in the ECA, will be deemed to exclude all matters relating to the environmental condition of the Assets and the Real Property or compliance of the Assets, the Real Property and the Business with Environmental Laws. For purposes of this Section 6.16.1., Real Property will have the meaning set forth in Section 1.1.1 of this Agreement.

6.16.2. Reporting. All reporting to governmental agencies or other reporting necessary or desirable in connection with Remedial Plans or Compliance Plans will be made by GM to the extent permitted by Environmental Laws. AAM will cooperate reasonably with GM in connection with or to effectuate such reporting. If Environmental Laws, as existing and in effect on the date of Closing, require reporting to be made solely with respect to or in connection with operations conducted by the Business prior to the date of Closing, whether such reporting is required to be made prior to or after the date of Closing, GM will prepare and submit such reports. AAM will otherwise be responsible for all reporting with respect to or in connection with operation of the Business after the date of Closing. Where Environmental Laws require reports to be submitted which cover a specific period of time and that period includes some time both before and after the date of Closing, and Environmental Laws will not permit separate reporting for pre and post-closing periods by GM and AAM, respectively, the parties hereto will cooperate reasonably to prepare and submit a joint report.

6.16.3. Wastewater and Stormwater Services. AAM and GM agree that they desire to enter into an agreement under which GM will provide certain industrial process wastewater, millwater, sanitary wastewater and stormwater conveyance and discharge services from the Tonawanda Plant to and through GM's nearby facilities after the date of Closing on mutually agreeable terms and conditions satisfactory to GM and AAM, but which will include environmental matters within its scope and related solely to the provision and use of such services (the "Services Agreement"). AAM and GM each agree that their entry into the Services Agreement will be a condition precedent to each of their respective obligations to consummate the transactions set forth in this Agreement.

6.16.4. Changes in Environmental Laws.

A. Any cost, expense or additional activity rendered necessary by any modification or amendment of any Environmental Law, as existing and in effect as of the date of Closing, will, except as otherwise provided in this Article VI., be the sole responsibility of AAM and AAM will indemnify and defend GM therefrom in accordance with Section 6.12.3.

B. Notwithstanding anything in this Agreement to the contrary, in the event any Environmental Law, as existing and in effect as of the date of Closing, is modified or amended to reduce the extent of remediation or compliance otherwise required before such amendment or modification, then GM will be entitled to avail itself of any such amendment or modification in performing its obligations under this Article VI.

6.16.5. Disclosure and Non-Recordation. AAM acknowledges, warrants and agrees that the materials, records, reports and documents provided by GM to AAM as of the date of the Closing adequately, lawfully and sufficiently disclose to AAM all environmental matters relevant to the Business, the Assets and Real Property, as defined in Section 1.1.1., such as to comply in form and substance with Section 10c of the Michigan Environmental Response Act ("MERA") (MCLA 299.610c). Without limiting any other provision of this Agreement, AAM hereby agrees that, to the extent permissible under law, AAM waives any right of AAM to receive, and waives and releases GM from any obligation to provide, any notice, disclosure document or other information or statement required by Section 10c of MERA to be provided by GM to AAM and which is related

to or concerns releases of materials or environmental conditions of, at or about, or environmental information concerning, the Real Property, as defined in Section 1.1.1., the Business or the Assets. AAM further waives and releases any claims it may or could at any time now or after the date of Closing have against GM in connection with or arising out of any such right or obligation including, but not limited to, any claim that any notice, disclosure document or other environmental information or statement provided by GM to AAM was inadequate, insufficient or incorrect in any way or was not, or was not properly, recorded or presented, sent or provided to AAM as required by Section 10c of MERA. The parties also agree that to the extent any obligation exists to record any such information or a notice thereof under Section 10c of MERA, such obligation will be AAM's; provided, however, that AAM will not record any such information or notice without GM's prior consent to and approval thereof, which consent and approval will not be unreasonably withheld.

6.17. Definitions. For purposes of this Article VI., the following definitions will apply:

A. "Environmental Laws" will mean all laws, ordinances, regulations, final orders and judgments concerning the subject of the introduction, emission, discharge or release of pollutants or contaminants into the air, soil or surface or ground water; the transportation, storage, treatment or disposal of waste materials; or the remediation or investigation of contamination of air, soil, or surface or ground water by pollutants, contaminants or waste materials including, but not limited to, CERCLA, RCRA, CWA, SWDA, CAA, TSCA, and EPCRA, and similar state and local laws, but will not include laws, ordinances, final orders, final judgments or regulations concerning primarily worker health or safety, including, but not limited to, OSHA, MCL §408.1001 et seq., NY Lab. Law §1 et seq. (Consol.), or NY Pub. Health Law §1 et seq. (Consol.). The foregoing terms have the following meanings:

"CAA" means the Clean Air Act, 42 U.S.C. §§ 7401, et seq., as amended.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended by, among other things, the Superfund Amendments and Reauthorization Act of 1986.

"CWA" means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq., as amended.

"SWDA" means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq., as amended.

"EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq., as amended.

"RCRA" means the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901, et seq., as amended.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. §§ 52601, et seq., as amended.

B. "Pre-Closing Environmental Condition" will mean the presence on the date of Closing of any hazardous substance, hazardous waste or toxic substance, as defined under Environmental Laws, as existing and in effect as of the date of Closing, in the soils, surface water or ground water in, on or under the Real Property in excess of the least stringent remediation standard acceptable under such Environmental Laws. In no event will the term include any contamination in or on any building, structure, improvement, fixture, appurtenance or equipment.

C. "Force Majeure" will mean an occurrence or nonoccurrence arising from causes beyond the reasonable control of a party and which hinders or delays performance or compliance and includes, but is not limited to, failure of a governmental agency to review or to approve or disapprove a permit, license or plan.

D. "Real Property" will mean for purposes of this Article VI. unless otherwise specifically provided only the land upon which the Business has been conducted and which is to be transferred by GM to AAM under this Agreement and will not include any buildings, structures, equipment, appurtenances, improvements, or fixtures located thereon.

E. "Non-Compliance Matter" will mean a violation of a specifically applicable Environmental Law, as existing and in effect as of the date of Closing, relating to the operation of the Business as of the date of Closing and in no case will it include the release or presence of any hazardous substance, hazardous waste or toxic substance, as defined under Environmental Laws, pollutant or contaminant into or in the soils, surface water, ground water or any other

environmental medium in, on, or under the Real Property or in or on any building, structure, improvement, appurtenance, fixture or equipment located thereon.

VII. REAL PROPERTY MATTERS.

7.1. Conveyance. Conveyance by GM to AAM of the Real Property sshall be by GM's covenant deeds (for the Detroit and Three Rivers properties) and by bargain and sale deeds with lien covenants (for the Buffalo and Tonawanda properties) in recordable form mutually satisfactory to the parties, conveying to AAM or its nominee the Real Property, together with all rights, privileges, easements and appurtenances thereto, subject only to Permitted Encumbrances, as set forth on Exhibit 4.1.4., and those adjustments referred to in Section 1.1.1 mutually agreed by the Parties to be Permitted Encumbrances. Included among the Contracts listed in Exhibit 1.1.2.C are certain recorded and unrecorded agreements, easements, restrictions and other encumbrances relating to the Real Property. AAM acknowledges receipt of such listed documents and agrees that the same are Permitted Encumbrances.

7.2. Title.

A. For the Real Property at each of the Detroit, Three Rivers, Buffalo and Tonawanda sites, GM shall, as assurance that, upon Closing, marketable fee simple title shall have been conveyed to AAM, provide to AAM as a condition upon Closing an Owner's Fee Policy of Title Insurance, on Form B-1970, with respect to the Real Property located at Detroit and Three Rivers (the "Michigan Title Policies"), and on Form 1990, with respect to the Real Property located at Buffalo and Tonawanda (the "New York Title Policies"), (i) in the respective amounts shown in Exhibit 7.2.A attached hereto and made a part hereof (which amounts, however, shall not be binding for purposes of allocating the Purchase Price described in Section 2.3), (ii) issued by Commonwealth Land Title Insurance Company, as underwriter, with Land Title Agency, Inc. of Cleveland, Ohio as agent (the "Title Company"), (iii) showing in Schedule A thereof the approved survey description of such Real Property and each easement appurtenant thereto, (iv) with the standard printed exceptions deleted, and otherwise showing in Schedule B thereof only the Permitted Exceptions identified in Exhibit 4.1.4 attached hereto and made a part hereof (subject to

the affirmative insurance and cure requirements of Section 7.2.B hereof) and (v) containing such endorsements as may reasonably be requested by AAM, at AAM's sole cost and expense. Except for the cost of any endorsements referred to in Section 7.2.A (v), GM shall pay the entire cost of providing the Michigan Title Policies in the form described above and GM and AAM shall each pay one-half of the cost of providing the New York Title Policies in the form described above.

B. If a defect in title (i.e., an exception not shown as a Permitted Encumbrance herein and not dischargeable by payments to be made at Closing) exists including any Survey Defects (as hereinafter defined), GM shall use reasonable efforts for and during a period of fifteen (15) days after obtaining notice of such defect(s) to affect a cure thereof or to obtain, with respect thereto, affirmative title insurance, reasonably satisfactory in form and substance to AAM. If GM fails to cure such title defect(s) or to obtain such insurance, within such period, AAM may, at its sole option (i) waive the defect(s) and accept title subject thereto, or (ii) extend the date of the Closing for a period not to exceed thirty (30) days to provide GM with additional time within which to affect such cure or obtain such insurance, or (iii) terminate this Agreement with respect to such Real Property or completely, in which event neither Party shall thereafter have any liability to the other in total or as to such property, as the case may be, and all funds previously paid or deposited by AAM relating to such Real Property, including all accrued interest, shall be returned to ~~A~~AAM. GM's obligation to use its reasonable efforts hereunder shall not require it to expend in excess of One Hundred Thousand Dollars ($100,000) in the aggregate to affect a cure or to obtain such affirmative insurance.

7.3. Land Survey.

A. Except for the survey of the Tonawanda, New York, property (which will be delivered by GM to AAM prior to the Closing), GM has delivered to AAM a survey of each parcel of Real Property (each a "Survey") made on the ground by a surveyor registered in the state such parcel of Real Property is located, in accordance with the 1992 minimum standard detail requirements for ALTA/ACSM Surveys, Urban, Suburban, Rural or Mountain and Marshland, as the case may be, including the following optional items from Table A: 1, 2, 3, 9, 10, 11 and 12, and dated as of a date after December 1, 1993, showing the Real Property, all known easements and

rights granted by license thereon which can be depicted on the Survey, all improvements (including fences and driveways), and access to and from a dedicated and accepted public right-of-way. Each such survey shall (i) be certified to AAM and its assigns, its mortgage lender, if any, in form reasonably satisfactory to AAM and to the Title Company, and (ii) comply with any requirements reasonably imposed by the Title Company as a condition to the removal of any exceptions from Schedule B to the respective Title Policies.

B. In the event a Survey shows (i) lack of access to and from a dedicated and accepted public right-of-way, or (ii) a matter which, in the judgement of AAM reasonably exercised, materially interferes with the use of the Real Property for the Business (collectively "Survey Defects"), GM shall, at its expense, either (i) remove or correct such Survey Defects, (ii) cause such Survey Defects to be insured over by the Title Company, or (iii) otherwise reasonably address such Survey Defects within the period provided for the cure of Title Defects and otherwise subject to the provisions of Section 7.2(B). GM's obligation under this Section 7.3.B. shall not require it to expend in excess of One Hundred Thousand Dollars ($100,000) in aggregate to cure any Survey Defects.

7.4. Special Provisions Relating to Tonawanda Real Property.

The Real Property located in Tonawanda, New York, which constitutes a portion of the Assets, is integrated with other GM facilities not included within the Assets. Exhibit 7.4 sets forth the actions required to be taken by GM and AAM in order to separate the Real Property at Tonawanda included within the Assets from the balance of the GM facilities currently integrated with such Real Property, all of which must be completed prior to Closing.

7.5. Real Estate Prorations.

All real estate and taxes shall be prorated and allocated in accordance with Section 11.14.D. and all utility charges shall be prorated in accordance with Section 11.14.E.

7.6. Special Provisions Relating to New York State Real Property Gains and New York State and Erie County Transfer Taxes.

A. GM and AAM shall cause all necessary documents to be submitted to the New York State Department of Taxation and finance for a determination of the amount of tax, if

any, which will be imposed under the New York Tax on Gains Derived from Certain Real Property Transfers (NY Tax Law Article 31-B) due as a result of this transaction. GM shall cause Form TP-580 (Transferor Questionnaire) and AAM shall cause Form TP-581 (Transferee Questionnaire) to be executed. Further, at Closing, GM shall deliver Form TP-584 (Real Estate Transfer Tax Return).

B. GM shall be responsible for the payment of any Real Property Transfer Gains Tax, New York Real Estate Transfer Tax (NY Tax Law Article 31) and the Erie County Transportation Assistance Tax (Erie County Local Law No. 4-1990) due as a result of the transactions contemplated by this Agreement, and shall indemnify and save AAM harmless from and against any cost, liability and expense in connection therewith.

C. The parties agree that the Questionnaires and Real Estate Transfer Tax Return shall list the Consideration to be paid for the acquisition by AAM of the Interests in Real Property as a result of the transactions contemplated by this Agreement to be the amounts set forth on the Valuation Agreement attached as Exhibit 7.6.C. The parties further agree that these amounts represent the fair market values of the Real Property interests in New York State involved with this transaction and the amount of the Purchase Price apportioned to those interests. The capitalized terms in this Section 7.6.C. shall have the meanings set forth in NY Tax Law Articles 31 and 31-B and Erie County Local Law No. 4-1990.

VIII. CONDITIONS TO CLOSING.

8.1. Conditions to Obligations of AAM. The obligation of AAM to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the date of the Closing of the following conditions (any one or more of which may be waived in whole or in part by AAM):

8.1.1. Legal Opinion. AAM shall have received from counsel to GM an opinion dated the date of Closing and in form and substance satisfactory to AAM substantially to the effect of Sections 4.1.1, 4.1.2 (without being subject to the approval of the GM Board of Directors) and 4.1.3.

needed to manufacture propeller shafts in accordance with the transition plan. GM agrees that it shall indemnify AAM against any loss, liability, damage, or expense as a result of the foregoing without the same being subject to any minimum, deductible, threshold, or similar amount.

XI. MISCELLANEOUS.

11.1. Waiver Of Compliance With Bulk Sales Laws and Hold Harmless Agreement. AAM hereby waives compliance by GM with the provisions of the Bulk Sales Law of any state or foreign jurisdiction, and GM agrees to indemnify AAM against and hold AAM harmless from any and all claims, demands, liabilities, and obligations arising out of the failure or alleged failure of GM to comply with any such law in respect of the sale of the Assets to AAM.

11.2. Notices. Except as otherwise provided in Section 10.6.C. relating to certain notices that are to be sent to the Chief Tax Officer of the GM Tax Staff, all notices, requests, consents or other communications permitted or required under this Agreement shall be in writing and shall be deemed to have been given when personally delivered or when sent via fax and first class mail, to the following:

If to GM:	General Motors Corporation 767 Fifth Avenue New York, New York 10153 Attn: Treasurer Fax No: (212) 418-3695
With a copy to:	North American Truck Platform Finance Director 31 E. Judson Street Pontiac, Michigan 48342 Fax No: (810) 456-5979 and Office of General Counsel New Center One Building 3031 West Grand Boulevard P.O. Box 33122 Detroit, Michigan 48232
If to AAM:	American Axle & Manufacturing, Inc. 1840 Holbrook Avenue Detroit, Michigan 48212 Attn: Richard E. Dauch, President Fax No: (313) 974-2070
With a copy to:	Baker & Hostetler 3200 National City Center

1900 East Ninth Street
Cleveland, Ohio 44114
Attn: R. Steven Kestner
Fax No: (216) 696-0740

provided, however, if either Party shall have designated a different addressee by notice, then to the last addressee so designated.

11.3. Assignment. This Agreement shall be binding and inure to the benefit of the successors and assigns of each of the Parties hereto, but no rights, obligations, duties or liabilities of either Party may be assigned without the prior written consent of the other, which shall not be unreasonably withheld.

11.4. Entire Agreement. This Agreement represents the entire agreement and understandings between the Parties with respect to the transactions contemplated herein. This Agreement supersedes all prior agreements, understandings, arrangements, covenants, representations or warranties, written or oral, by any officer, employee or representative of either Party dealing with the subject matter hereof.

11.5. Waiver. Waiver by GM or AAM of any breach or of a failure to comply with any provision of this Agreement shall not constitute, or be construed as, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any provision of this Agreement.

11.6. Amendment. This Agreement may only be terminated or amended in writing by duly authorized representatives or officers of the Parties.

11.7. Expenses. Each Party shall be responsible for its own expenses incurred in connection with the preparation of this Agreement, the performance of its obligations hereunder and with the consummation of the transactions contemplated hereby, except as otherwise expressly provided in this Agreement.

11.8. Third Parties. Nothing contained in this Agreement is intended to or shall be construed to confer upon or give to any person, firm, corporation, association, labor union, trust, or governmental entity other than the Parties hereto and their respective permitted successors and assigns, any claims, rights, or remedies under or by reason of this Agreement.

11.9. Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

11.10. Counterparts. This Agreement has be executed by the Parties in two counterparts. Each fully executed counterpart shall be deemed an original.

11.11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.

11.12. Public Announcements. GM and AAM will consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and shall not issue any press release or make any public statement without mutual consent, except as may be required by law and then only with such prior consultation.

11.13. Sales or Transfer Taxes. All costs relating to the Closing of the transactions contemplated hereby, including all sales taxes, documentary and stamp taxes, use taxes, gross receipt taxes in connection with the transfer of the Assets, as well as any permit, transfer and filing fees required in order to obtain governmental approvals and consents relating to the transactions contemplated by this Agreement and any related agreements, including the fees associated with AAM's filings under HSR, shall be paid by AAM; except that real estate transfer taxes and all charges incurred in filing and recording real property documents shall be paid by GM..

11.14. Tax Matters.

A. GM will be responsible for the preparation and filing of all applicable Tax Returns for the Business for all periods on or prior to the Closing as well as with respect to periods for which the consolidated, unitary and combined Tax Returns of GM will include the operations of the Business. GM will make all payments required with respect to any such Tax Return.

B. AAM will be responsible for the preparation and filing of all applicable Tax Returns for the Business for all periods after the Closing (other than for Taxes with respect to periods for which the consolidated, unitary, and combined Tax Returns of GM will include the operations of the Business). AAM will make all payments required with respect to any such Tax Return.

C. GM and AAM will cooperate in connection with (i) the preparation of filing of any Tax Return, tax election, Tax consent or certification, or any claim for a Tax refund, (ii) any determination of liability for Taxes, and (iii) any audit, examination or other proceeding in respect of Taxes related to the Business or the Assets. Such cooperation includes direct access to engineering and contracting personnel.

D. All real estate taxes and general assessments and personal property taxes shall be allocated and prorated between the Parties as of * the date of Closing in accordance with local practice. With respect to the Real Property at Tonawanda, if such Real Property is not separately assessed for real estate tax purposes, such real estate taxes shall be further pro rated based upon the portion of the property covered by the tax bills which is included within the Assets and that portion which is not included within the Assets as set forth on Exhibit 7.4.

E. GM shall cause all utility meters to be read as of the date of the Closing. GM shall pay all utility charges through the date of the Closing and AAM shall be responsible for all utility charges relating to subsequent periods.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized signatories at Detroit, Michigan.

GENERAL MOTORS CORPORATION

By: _____

Print Name: John H. Monk Jr

AMERICAN AXLE & MANUFACTURING, INC.

By: R. E. Dauch President

Print Name: R. E. DAUCH

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