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Attorneys for Flextronics International Ltd., et al.

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

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

**RESPONSE OF FLEXTRONICS INTERNATIONAL, LTD. ET. AL.
TO DEBTORS' OBJECTION TO SECTION 509(b)(9) CLAIM**

Flextronics International, Ltd., its subsidiaries and affiliates¹ (hereinafter collectively "Flextronics") hereby file their response (the "Response") to *Debtors' Objection To Certain 503(b)(9) Claims Under The Order Pursuant to 11 U.S.C. §§ 105(a) And 503(b)(9) Establishing Procedures For The Assertion, Resolution, And Satisfaction Of Claims Asserted Pursuant to 11*

¹ Including but not limited to Flextronics Manufacturing (Shanghai) Company, Ltd., Flextronics Automotive, Inc., and Flextronics Corporation (fka Solectron Corporation).

U.S.C. §503(b)(9) (the “Objection”) filed by Motors Liquidation Company (f/k/a General Motor Corporation.) and its affiliated debtors (collectively, the "Debtors").

Summary of Flextronics’ Response

Flextronics seeks entry of an order (1) requiring the Debtors to pay an amount not less than **\$64,245.47** that remains due and owing by Debtors to Flextronics pursuant to the Trade Agreement² between the Parties and the Section 503(b)(9) Claim³ filed by Flextronics, and (2) denying the Objection to the extent that such objection limits or otherwise affects the Debtors obligation to pay \$64,245.47 (and such additional amounts as may be determined to remain due and owing in this matter) to Flextronics on account of the Trade Agreement and the Section 503(b)(9) Claim.

Background

1. On June 1, 2009 (the “Petition Date”), the Debtors filed their individual petitions for relief in the United States Bankruptcy Court, Southern District of New York (the “Court”) under Chapter 11 of the U.S. Bankruptcy Code and, continually since that date, have operated their respective estates as debtors-in-possession.

2. On June 1, 2009, the Court entered an order (the “Supplier Order”) authorizing the Debtors to enter into trade agreements with certain suppliers to pay prepetition claims subject to certain terms and conditions authorized by the Court.

3. On or about July 7, 2009, the Court approved the sale of substantially all of the Debtors’ assets (the “Sale”) to General Motors LLC (f/k/a General Motors Corporation) (the

² See ¶5 of this Response for definition of the Trade Agreement between the Parties.

“Purchaser”) and, in conjunction with the Sale, certain executory contracts were designated as “Noticed Executory Contracts” that the Debtor was authorized to assume and to assign to the Purchaser upon the Purchaser’s direction. Executory contracts to which Flextronics is a counterparty were among the contracts initially identified as Noticed Executory Contracts.

4. Ultimately, Flextronics understands that the Debtors filed a *Notice of Withdrawal of Designation Of Contracts For Assumption And Assignment* that states the Purchaser no longer seeks to have any executory contracts to which Flextronics is a counterparty assumed by the Debtors or assigned to the Purchaser despite their previous identification as “Noticed Executory Contracts.” Accordingly, to the best of Flextronics’ information, none of its executory contracts with the Debtors have been assumed and assigned to the Purchaser.

5. On or about July 30, 2009, the Debtors and Flextronics entered into a Trade Agreement, dated July 30, 2009 (the “Trade Agreement”) pursuant to the Supplier Order that provided for the Debtors’ payment of (a) US\$33,472.22 to Flextronics Manufacturing (Shanghai) Co. Ltd and (b) US\$75,388.04 to Flextronics Automotive, Inc. The Trade Agreement also provided, in pertinent part, that Flextronics would not assert any reclamation claim or claim pursuant to 11 U.S.C. §503(b)(9) on account of any goods (i) shipped to the Debtors prior to the Petition D and (ii) *for which Flex had been paid pursuant to this trade agreement or otherwise.* See paragraph 5 of the Trade Agreement. [Emphasis added.] Flextronics has not waived, released or otherwise compromised its right to full payment due, or to assert the Section 503(b)(9) Claim, under the Trade Agreement in the event *Flex has been not paid the full amount due pursuant to the Trade Agreement or otherwise.* A true and accurate copy of the Trade

³ See ¶6 of this Response for definition of the Section 503(b)(9) Claim.
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Agreement is attached hereto as Exhibit "A" and incorporated by reference herein as if fully set forth.

6. On August 27, 2009, Flextronics filed a proof of claim asserting that the Debtors are indebted to Flextronics in the aggregate amount of \$97,717.69 (the "Section 503(b)(9) Claim") for (a) goods received by Debtors in the twenty day period prior to the Petition Date and (ii) *for which Flex had been not paid pursuant to the Trade Agreement or otherwise*. More specifically, the Section 503(b)(9) Claims asserts that, as August 27, 2009, (i) US\$ 38,199.00 was due and owing to Flextronics Manufacturing (Shanghai) Co. Ltd. and (ii) US\$ 59,518.69 was due and owing to Flextronics Automotive, Inc., for such delivered goods.

7. Subsequent to filing the Section 503(b)(9) Claim, the Debtors paid Flextronics US\$ 33,472.22 with regard to goods subject to the Section 503(b)(9) Claim that were delivered by Flextronics Manufacturing (Shanghai) Co. Ltd within the 20 days prior to the Petition Date. After applying these monies, the Debtors continue to owe Flextronics **not less than the aggregate amount of US\$ 64,245.47** on account of the Section 503(b)(9) Claim, which more specifically includes (a) the additional US\$ 4,726.78 owed to Flextronics Manufacturing (Shanghai) Co. Ltd and (b) the amount of US\$ 59,518.69 owed Flextronics Automotive, Inc.

8. On or about October 29, 2009, the Debtors filed the Objection To §503(b)(9) Claims and contended that the Section 503(b)(9) Claim should be disallowed because (a) the underlying contract had been assumed, *see* Objection at ¶6 and Exhibit "A", and (b) the "Valid" Amount of the claim is \$55,587.64. *See* Objection at ¶8 and Exhibit "A." No other grounds were asserted in the Objection to the validity or allowance of the Section 503(b)(9) Claim.

LEGAL ARGUMENT

A. The Proof of Claim Is *Prima Facie* Evidence of the Validity and Amount of the Claim

The filing of a proof of claim constitutes *prima facie* evidence of its amount and validity. See Fed. R. Bankr. P. 3001(f); see also, *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 – 74 (3rd Cir. 1992); *Ashford v. Consolidated Pioneer Mortgage (In re Consolidated Pioneer Mortgage)*, 178 B.R. 222, 226 (9th Cir. BP 1995), *aff'd* 91 F.3d 151 (9th Cir. 1996). A proof of claim that is *prima facie* valid “alleges facts sufficient to support a legal liability [of the debtor] to the claimant [.]” *In re Allegheny Int'l, Inc.*, 954 F.2d at 173 – 74. The proof of claim filed by Flextronics constitutes *prima facie* evidence of its amount and validity of the Section 503(b)(9) Claim.

B. The Debtor Has Failed To Submit Evidence Rebutting The *Prima Facie* Validity and Amount of the Proof of Claim

Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), “[a] party objecting to a claim has the initial burden of presenting a substantial factual basis to overcome the *prima facie* validity of a proof of claim [and] [t]his evidence must be of a probative force equal to that of the creditor’s proof of claim.” *In re Hinkely*, 58 B.R. 339, 348 (Bankr. S.D. Tex. 1986), *aff'd*, 89 B.R. 608 (S.D. Tex. 1988), *aff'd* 879 F.2d 859 (5th Cir. 1989). In order “to overcome this *prima facie* evidence, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim.” *In re Reilly*, 245 B.R. 768, 773 (2nd Cir. B.A.P. 2000), *aff'd* 242 F.3d 362 (2nd Cir. 2000). Where a debtor simply makes a *pro forma* objection without any evidentiary support, a court may summarily overrule such

objections. *See e.g., In re Garner*, 246 B.R. 617, 620, 623 (B.A.P. 9th Cir. 2000). The *prima facie* validity of a proof of claim is “strong enough to carry over a mere formal objection without more.” *In re Schlehr*, 290 B.R. 387, 395 (Bankr. D. Mont. 2003).

C. Debtors Have Not Carried Their Burden In Objecting To Flextronics’s Section 503(b)(9) Claim

Section 503(b)(9) provides, in pertinent part, that:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including ...

...

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

“Thus, to qualify for administrative priority treatment, a claim must be (1) for goods, (2) that are received by the debtor within the 20 days prior to case commencement, and (3) that are sold to the debtor in the ordinary course of its business.” *In re Pilgrim’s Pride Corporation*, --- B.R. ---, 2009 WL 2959717 at 4 (Bankr. N.D. Tex. 2009).

An administrative claim under section 503(b)(9) covers only the value of the goods delivered. For purposes of Section 503(b)(9), the measure of the value of the goods afforded administrative expense status focuses on the “valuation of property a debtor intended to retain and use (as opposed to a valuation to determine a creditor’s realization at foreclosure). . . Here, where the goods retained by Debtors will be used by Debtors, Debtors should also pay as an administrative expense under section 503(b)(9) what it would have cost Debtors to acquire similar goods.” *In re Pilgrim’s Pride Corporation*, 2009 WL 2959717 at 9.

In the case at bar, the Debtors have failed to carry their burden of proof to show a substantial factual basis overcoming the *prima facie* validity of the Section 503(b)(9) Claim asserted by Flextronics. First, the Debtors' Objection, by its failure to dispute any of the elements of Section 503(b)(9), concedes the validity of the Section 503(b)(9) Claim: that is, that such claim is for goods shipped, that such goods were received by Debtors within 20 days prior to Petition Date, and that such goods were sold to the Debtors in the ordinary course of its business. By its failure to dispute any of these elements of Section 503(b)(9), the Debtors have not carried their "initial burden of presenting a substantial factual basis to overcome the *prima facie* validity of a proof of claim" *In re Hinkely*, 58 B.R. at 348. The Debtors' *pro forma* Flextronics's Section 503(b)(9) Claim, on its face, constitutes *prima facie* evidence of each element of a claim under Section 503(b)(9) as asserted by Flextronics. *See In re Allegheny Int'l, Inc.*, 954 F.2d at 173 – 74. In contrast, the Debtors' Objection lacks any evidentiary basis overcoming the *prima facie* validity of the Section 503(b)(9) Claim asserted by Flextronics. *See In re Garner, supra; In re Schlehr*, 290 B.R. 387, 395 (Bankr. D. Mont. 2003).

At most, the Debtors' Objection makes an unsubstantiated assertion that the correct amount of the Section 503(b)(9) Claim is \$55,587.64,⁴ rather than US\$ 97,717.69.⁵ initially asserted by Flextronics. Flextronics concession that it received a US\$ 33,472.22 payment from Debtors pursuant to the Trade Agreement and, thus, the total amount now due and owing under the Section 503(b)(9) Claim is \$64,245.47, only means that the amount due is less than the initial

⁴ *See* Objection at ¶8 and Exhibit "A" thereto.

⁵ The Section 503(b)(9) Claim asserts that, for such delivered goods as August 27, 2009, (i) US\$38,199.00 was due and owing to Flextronics Manufacturing (Shanghai) Co. Ltd., and (ii) US\$59,518.69 was due and owing to Flextronics Automotive, Inc.

amount asserted in the Section 503(b)(9). This acknowledgement of the receipt of some monies due under the Trade Agreement does not represent a waiver of the right to receive the full amounts due under the Trade Agreement (*see*, below). Here, the Debtors' have failed to submit any evidence supporting any contention that less than \$64,245.47 remains due and owing to Flextronics on account of the Section 503(b)(9) Claim.

D. The Trade Agreement Does Not Bar The Section 503(b)(9) Claim.

Pursuant to the Trade Agreement between the Parties, Flextronics retains the right to assert a claim pursuant to 11 U.S.C. §503(b)(9) where (a) goods were delivered to the Debtors within twenty (20) days prior to the Petition Date and (b) the amount set forth in the Trade Agreement has not been paid in full. *Cf.* Trade Agreement at ¶6 (which provides, in pertinent part, that no right to assert a Section §503(b)(9) claim if the amounts under the agreement have been paid. Here, Flextronics has not waived, released or otherwise compromised its right to full payment, or to assert the Section 503(b)(9) Claim, under the Trade Agreement because *Flex has been not paid the full amount due pursuant to the Trade Agreement or otherwise.* Therefore, because \$64,245.47 remains due and owing under the Trade Agreement, the Section 503(b)(9) Claim remains valid and enforceable in that amount.

WHEREFORE, Flextronics requests entry of an order (1) requiring the Debtors to pay an amount not less than the aggregate amount of **\$64,245.47** remains due and owing by Debtors to Flextronics pursuant to the Trade Agreement and the Section 503(b)(9) Claim, (2) denying the Objection To §503(b)(9) Claims to the extent that such objection limits or otherwise affects the Debtors obligation to pay \$64,245.47 (and such additional amounts as may be determined to

remain due and owing in this matter), and (3) for such other and further relief as is appropriate under the circumstances.

Dated: New York, New York
November 18, 2009

WHITE AND WILLIAMS, LLP

By: /s/ Karel S. Karpe
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And

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Attorneys for Flextronics International Ltd.



July 30, 2009

Insert Name of Supplier and all Supplier's related entities (subsidiaries and affiliates) doing business with the Company:

Flextronics International USA

Flextronics Automotive Inc.

Flextronics MFG (Shanghai) Co. Ltd.

Flextronics Technology Co. Ltd.

Insert ultimate DUNS number: 595240953 - Shanghai & 250955580 - Canada

Dear Valued Supplier:

As you are no doubt aware, General Motors Corporation, and certain of its direct and indirect subsidiaries (collectively, the "Company"), filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Case" and the "Bankruptcy Court," respectively) on June 1, 2009 (the "Commencement Date"). On the Commencement Date, the Company requested the Bankruptcy Court's authority to pay certain of its suppliers in recognition of the importance of its relationship with such suppliers to its ongoing operations. On June 1, 2009, the Bankruptcy Court entered an order (the "Order") authorizing the Company to pay the prepetition claims of certain suppliers, subject to such suppliers agreeing to the terms set forth below in this agreement (the "Trade Agreement"). A copy of the Order is enclosed.

In order to receive payment on prepetition claims, each selected supplier must agree to enter into a Trade Agreement, the provisions of which are outlined below, including agreeing to continue supplying goods to the Company based on "Customary Trade Terms." In the Order, Customary Trade Terms are defined as (a) MNS-2 payment terms or such other more favorable payment terms as may be customary between a supplier and the Company,¹ (b) the terms and conditions embodied in the Company's general terms and conditions or such other more

¹ "MNS-2" refers to the most common payment terms in the Company's industry, whereby payment for goods supplied is generally due on the second business day of the second month following the receipt of such goods. For example, under these terms, payment for goods received by the Company during the month of May 2009 is due on July 2, 2009.

favorable trade terms, practices and programs in effect between a supplier and the Company in the twelve months prior to the Commencement Date and (c) those other terms that ensure the continued flow of goods and services, the expeditious resolution of claim disputes, and the transfer of suppliers' relationships to the Purchaser of the Company's business.

For purposes of administration of the essential supplier program, as authorized by the Bankruptcy Court, and payment of your prepetition claim, the Company and you agree as follows:

1. The Company will make payment of [\$33,472.22 USD for Shanghai & \$75,388.04 CAN for Canada] validly due and owing for shipments received by the Company prior to the Commencement Date (a "Trade Claim") within 10 business days after the execution of this Trade Agreement (without modification) by a duly authorized representative of your company.
2. You will continue to supply goods or provide services, as applicable, to any non-Debtor affiliate of the Company with which you do business, on the terms set forth in the applicable contracts or purchase orders between you and such non-Debtor affiliates, including the purchase price for such goods and services, pursuant to the terms of the applicable contracts or purchase orders. Further, you will cause your affiliates and/or subsidiaries who are doing business with any non-Debtor affiliate of the Company to continue to supply goods or provide services, as applicable, to such non-Debtor affiliate, on the terms set forth in the applicable contracts or purchase orders between such parties, including the purchase price for such goods and services, during the Term.
3. Except as provided in this Trade Agreement, the Company's general terms and conditions will apply to all the Company's purchases from you; and all terms and conditions of the applicable contracts or purchase orders between you and the Company will remain in full force and effect except as specifically modified by this Trade Agreement.
4. You acknowledge that other than "Unpaid Tooling"² all "Tooling"³ being utilized by you to manufacture parts for the Company, whether under direct agreements between you and the Company or agreements between you and third parties, is owned by the Company and is being held by you

² The term "Unpaid Tooling" means Tooling for which Company has not paid the purchase price set forth in the applicable purchase order for such Tooling to a supplier or any of its predecessor(s) in interest.

³ The term "Tooling" means collectively all tooling (including primary tooling and secondary tooling), dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and any documentation including engineering specifications, PPAP books and test reports, together with any accessions, accessories, attachments, parts, substitutions, replacements and appurtenances thereto, used by a supplier in connection with its manufacture of parts for the Company, but limited to only such items which are covered by purchase orders previously issued by the Company.

and, to the extent that you have transferred such Tooling to third parties, by such third parties, as bailees-at-will. Upon payment in full of the applicable purchase order price for any item of Unpaid Tooling, less any amounts necessary to satisfy outstanding liens of third-parties on such Tooling, if any, such item shall thereafter be included in the definition of Tooling and be acknowledged to be owned by the Company;

In the event of a dispute between you and the Company as to whether any Tooling is Unpaid Tooling, pending resolution of the dispute the Tooling subject to the dispute will be presumed to be owned by the Company, the Company will have the right to take immediate possession of such Tooling and you will not withhold delivery of possession of such Tooling; provided, however, such Tooling will remain subject to any claim or right to payment you may have for the disputed amounts (despite your relinquishment of possession).

The rights and obligations contained in this paragraph 4 are in addition to (and not in lieu of) the rights of the Company under its respective purchase orders, including its global terms and conditions of purchase, and any other agreements between you and the Company, and will continue in full force and effect notwithstanding the expiration or termination of this Trade Agreement.

5. You will not file or otherwise assert against any of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which such lien is asserted) related in any way to any prepetition amounts allegedly owed to you by the Company including, but not limited to, the Trade Claim. Furthermore, if you have taken steps to file or assert such a lien prior to entering into this Trade Agreement, you agree to immediately take any actions required to remove such lien.
6. You will not assert any reclamation claim or similar claim, including any claim under section 503(b)(9) of the Bankruptcy Code, on account of any goods shipped to the Company prepetition and for which you have been paid pursuant to this Trade Agreement or otherwise.
7. If you fail or refuse, at any time, to continue to supply goods or provide services, as applicable, to the Company on the terms set forth in this Trade Agreement, any payments received by you on account of your Trade Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to you. Furthermore, you will immediately repay to the Company any payments made to you on account of your Trade Claim to the extent that the aggregate amount of such payments exceed the outstanding postpetition obligations owed to you, without giving effect to any rights of setoff, reclamation or otherwise.

8. You acknowledge you have reviewed the terms and provisions of the Order and you consent to be bound by all such terms.

You further agree that you will keep the terms of this Trade Agreement, together with all related settlement discussions between you and the Company, strictly confidential. You may disclose the terms of this Trade Agreement only to your management personnel that need to know such information to implement the terms of this Trade Agreement, legal counsel and other advisors with whom you have a recognized legal privilege and your working capital lender, if so requested; provided that all such parties have been informed of the confidentiality restrictions contained herein and have agreed in writing to abide by such restrictions. You agree that you will be responsible and directly liable for any breach of the confidentiality provisions set forth in this Trade Agreement by your management personnel, legal counsel, other advisors and, if applicable, working capital lender. You acknowledge that failure to honor the confidentiality provisions contained herein would cause irreparable harm to the Company. Any discussions by you with any third parties, including the press or media or consultants, regarding this Trade Agreement and its terms are expressly prohibited.

The Company expressly reserves all of its rights at law and in equity, including without limitation, all of its rights as debtor-in-possession under the Bankruptcy Code. Without limiting the generality of the foregoing sentence, this Trade Agreement, and any payment made hereunder, does not constitute (a) a waiver of the Company's rights (i) to dispute any claim, (ii) to reject any agreement, contract, purchase order or other document under section 365 of the Bankruptcy Code, or (iii) to take, or refrain from taking, any other action under any applicable section of the Bankruptcy Code or any other applicable law or (b) an approval, adoption, or assumption of any agreement, contract, purchase order, or other document under section 365 of the Bankruptcy Code or any other applicable law, all of the Company's rights with respect to which are expressly reserved.

This Trade Agreement may be executed in any number of originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and together will constitute one and the same instrument. The parties agree that their respective signatures can be delivered by facsimile or e-mail, and that facsimile and e-mail signatures will be treated as originals for all purposes. The individual signing this Trade Agreement on behalf of each party represents and warrants that he or she has all power and authority necessary to execute this Trade Agreement on such party's behalf.

This Trade Agreement is made in the State of Michigan and will be governed by, and construed and enforced in accordance with the laws of the State of Michigan, without regard to conflicts of law principles. The parties acknowledge that the Bankruptcy Court will have exclusive jurisdiction over any case or controversy arising out of or relating to this Trade Agreement or its subject matter and that all litigation arising out of or relating to this Trade Agreement or its subject matter must be commenced in the Bankruptcy Court.

Please sign below to acknowledge your consent to the terms of this Trade Agreement and return an executed copy to the Company either by email to SupplierCallCenter@gm.com or by facsimile to 1-248-312-7191.

If you have any questions about this Trade Agreement or our financial restructuring, please do not hesitate to call Supplier Information Call Center toll free at 1-888-409-2328 or 1-586-947-3000.

Sincerely,
GENERAL MOTORS CORPORATION

/s/ Robert E. Socia

By: Robert E. Socia

Title: Group Vice President –
General Motors Corporation

Date: July 30, 2009

ACKNOWLEDGED AND AGREED:

On behalf of itself and all of its affiliates and subsidiaries
listed on the first page to this Trade Agreement

By: 

Title: Sr. Dir. Business Dev.

Date: August 6, _____, 2009

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Attorneys for Flextronics International Ltd., et al.

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

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

**CERTIFICATE OF SERVICE OF
RESPONSE OF FLEXTRONICS INTERNATIONAL, LTD. ET. AL. TO
DEBTORS' OBJECTION TO SECTION 509(B)(9) CLAIM**

I, Karel S. Karpe, hereby certify that on this 18th day of November, 2009, I caused the Response of Flextronics International, Ltd. et. al. to Debtors' Objection To Section 509(B)(9) Claim to be served on the following parties, via ECF and by regular mail:

By ECF and Regular Mail

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Joseph Smolinsky, Esq. and Nathan Pierce, Esq.

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Attn: Kenneth H. Eckstein, Esq. and Thomas Moers Mayer, Esq.

Office of the United States Trustee for the Southern District of New York
33 Whitehall Street, 21st Floor
New York, NY 10004
Attn: Diana G. Adams, Esq.

Dated: New York, New York
November 18, 2009

By: _____/s/Karel S. Karpe
Karel S. Karpe