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July 1, 2011

VIA HAND DELIVERY

The Honorable Robert E. Gerber, Chambers  
United States Bankruptcy Court, SDNY  
One Bowling Green  
New York, NY 10004-1408

Re: Official Committee of Unsecured Creditors of Motors Liquidation Company v. United States Department of Treasury, et al., Adv. Pro. No. 11-09406

Dear Judge Gerber:

We represent the Official Committee of Unsecured Creditors (the “**Committee**”) of Motors Liquidation Company, plaintiffs in this adversary proceeding seeking a declaratory judgment (the “**Action**”). We submit this letter, together with defendants U.S. Treasury and Export Development Canada (together, the “**DIP Lenders**” and together with the Committee, the “**Parties**”), to propose a timeline, which is acceptable to the Parties, for motion practice in this Action. Among other things, if approved, this timeline will extend the DIP Lenders’ time to respond to the complaint from July 15, 2011 to August 5, 2011.

In addition, pursuant to Local Bankruptcy Rule 7056-1(a), the Parties respectfully write to set forth the issues to be presented in the forthcoming motions. Lastly, the Court has scheduled a pre-trial conference for July 27, 2011, however, due to various vacation schedules, the Parties hope the Court could either accommodate a request that the pre-trial conference be re-scheduled for the week of July 18<sup>th</sup>, or, given the parties’ agreement regarding scheduling issues, cancel such pre-trial conference.

**Summary of the Action**

As the Court is aware, on June 7, 2011, the Committee filed a Complaint seeking a declaratory judgment that (a) the DIP Lenders are not entitled to any proceeds of the Term

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Loan Avoidance Action<sup>1</sup> and have no interests in the Avoidance Action Trust, and (b) the holders of Allowed General Unsecured Claims have the exclusive right to receive any and all proceeds of the Term Loan Avoidance Action, and are the exclusive beneficiaries of the Avoidance Action Trust. The Committee had previously attempted to resolve the issues addressed in the Action by filing a Motion to Enforce the Orders and DIP Credit Agreement but following oral argument on October 21, 2010, the Court issued a bench decision denying the Motion to Enforce without prejudice.

### **Status of the Action and Proposed Motion Schedule**

Since initiating the Action, the Parties have had several telephone conferences to discuss how best to proceed. Each party wishes to file a potentially dispositive motion without first conducting discovery and the Parties agree it will be most efficient for the Court to simultaneously consider both motions.

The Committee contends that the Court must proceed expeditiously because the Committee argues, if the beneficiaries of the Term Loan Avoidance Action are not determined on or before the Avoidance Action Trust Transfer Date (i.e., December 15, 2011), then the holders of Allowed General Unsecured Claims would suffer unnecessary, adverse tax consequences if later they are deemed beneficiaries and receive proceeds from the Term Loan Avoidance Action. Accordingly, to prevent potential double taxation, the Committee believes that the Action must be settled or fully adjudicated prior to December 15, 2011. The Committee has expressed, thus, an interest in moving for summary judgment as soon as possible. The DIP Lenders do not concede these points but have no objection to the Committee's proposed briefing schedule.

The DIP Lenders, on the other hand, have asserted their view that the issues raised in the Action may not be ripe for adjudication and have expressed an intent to file a motion to dismiss, as well as oppose the Committee's summary judgment motion.

In an effort to timely present all issues raised by each Party, the Parties have agreed to the following proposed motion schedule:

Motion for Summary Judgment – The Committee will file a motion for summary judgment on July 22, 2011, prior to the DIP Lenders' filing their motion to dismiss the Complaint. The DIP Lenders' response and/or cross motion for summary judgment will be due on September 2, 2011. The Committee's reply, including any response to the DIP Lenders' cross motion for summary judgment will be due on September 22, 2011. If the DIP Lenders cross-

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Complaint for Declaratory Judgment filed on June 7, 2011 (the "**Complaint**").

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move for summary judgment and believe a reply in support of the cross-motion is warranted, that reply shall be due on September 29, 2011.

Motion to Dismiss – The DIP Lenders will file a motion to dismiss on August 5, 2011 and their time to answer or move with respect to the complaint shall be extended to that date. The Committee’s response will be due on September 2, 2011. The DIP Lenders’ reply will be due on September 22, 2011.

The Parties respectfully request that a hearing on both the motion for summary judgment and the motion to dismiss be set for early October.

As the Court is aware, the hearing on Kramer Levin’s Fifth and Final Fee Application is currently set for September 26, 2011. Last fall, U.S. Treasury reserved its right to object to the portion of Kramer Levin’s fee application that seeks reimbursement for work performed in connection with the Motion to Enforce on grounds that, *inter alia*, paragraph 20 of the DIP Order<sup>2</sup> prohibits the DIP proceeds from being used to fund litigation against the DIP Lenders. If the Court, for ease of administration, would prefer to entertain Kramer Levin’s final fee application at the time of the hearing on the motion for summary judgment and the motion to dismiss, rather than on September 26, 2011, the Parties would have no objection.

We thank the Court for its attention to this matter.

Respectfully submitted,

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<sup>2</sup> Paragraph 20 of the DIP Order provides as follows: “Notwithstanding anything herein to the contrary, none of the proceeds of any extension of credit under the DIP Credit Facility shall be used in connection with (a) any investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lenders or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada, (b) the investigation or prosecution of any claims, causes of actions, adversary proceeding or other litigation against the DIP Lender or the Existing UST Secured Parties or EDC, in its capacity as lender under the Canadian Facility and on behalf of the Governments of Ontario and Canada or any of their respective affiliates with respect to any loans, extensions of credit or other financial accommodations made to any Debtor prior to, on or after the Petition Date, or (c) any loans, advances, extensions of credit, dividends or other investments to any person not a Borrower or Guarantor other than for certain permitted exceptions set forth in the DIP Credit Facility.”

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/s/ Thomas Moers Mayer  
Thomas Moers Mayer, counsel to the Committee

/s/ David Jones  
David Jones, counsel to U.S. Treasury

/s/ Michael Schein  
Michael Schein, counsel to EDC