

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

In re:

MOTORS LIQUIDATION COMPANY, et al.,
f/k/a General Motors Corp., et al.,

Debtor.

Chapter 11

Case No. 09-50026 (REG)

(Jointly Administered)

**DECLARATION OF KIMO S. PELUSO
IN SUPPORT OF THE SEAPORT GROUP LLC RESPONSE TO
OBJECTION TO NOTICE OF TRANSFER OF CLAIM NO. 70347**

I, KIMO S. PELUSO, hereby declare pursuant to 28 U.S. C. § 1746 as follows:

1. I am a partner at Manatt, Phelps & Phillips, LLP, attorneys for The Seaport Group LLC (“Seaport”) in this matter and in an action Seaport filed against Dale Earnhardt, Inc., in the U.S. District Court for the Southern District of New York against Dale Earnhardt, Inc. (“DEI”), *The Seaport Group LLC v. Dale Earnhardt, Inc.*, No. 10-cv-1599 (DAB) (the “Seaport Action”). Except where stated otherwise, I have personal knowledge of the facts stated herein. I respectfully submit this Declaration in support of Seaport’s Response to DEI’s Objection to Notice of Transfer of Claim No. 70347 (the “Objection”).

2. A true and correct copy of Seaport’s complaint in the Seaport Action is attached at **Exhibit 1**.

3. As set forth in the complaint in the Seaport Action, Seaport is a limited liability company based in New York, New York and a registered broker-dealer. Among other things, Seaport buys and sells trade claims, including creditor claims pending in

bankruptcy court. Seaport has purchased, sold and brokered the sale of numerous such claims, and it is well-known among the companies that handle such transactions. (Ex. 1, Seaport Complaint ¶ 2)

4. DEI answered the complaint in the Seaport Action on April 30, 2010. A true and correct copy of DEI's Answer is attached at **Exhibit 2**. As DEI has admitted, DEI is a corporation based in Mooresville, North Carolina. DEI is a part owner of the professional NASCAR racing team Earnhardt Ganassi Racing and is also in the business of selling products related to, and licensing the name and likeness of, late professional NASCAR racer, Dale Earnhardt. (Ex. 1, Seaport Cplt. at ¶ 3; Ex. 2, DEI Answer at ¶ 3)

5. The Seaport complaint alleges that on November 18, 2009, DEI and Seaport entered into a Trade Claim Confirmation – a written agreement to sell to Seaport the bankruptcy claim at issue here, with a formal assignment to be executed thereafter. (Ex. 1, Seaport Complaint at Exhibit A) Seaport alleged that DEI, however, attempted to renege on the sale and refused to execute a formal assignment, as required by the parties' Trade Claim Confirmation. In its complaint, Seaport sought declaratory relief, specific performance to compel DEI to assign the bankruptcy claim to Seaport, and in the alternative, compensatory damages. (*Id.*)

6. After it filed its lawsuit, Seaport was able to reach a settlement with DEI. The parties entered into the Assignment of Claim and Settlement Agreement, dated July 16, 2010 (the "Assignment Agreement"). A true and correct copy of the Assignment Agreement is attached at **Exhibit 3**. The parties' stated purpose of the Assignment Agreement was to "resolve their dispute and to fully and finally settle the [Seaport]

Action.” (Ex. 3, Assignment Agreement at p.1) The Assignment Agreement is governed by New York law. (*Id.* at § 15)

7. The Agreement states that DEI filed a claim in this bankruptcy action for a value of \$3,252,706.80, which claim was later amended to a value of 3,031,180.00 (the “Claim”). In finalizing the Assignment Agreement, on July 19, 2010, DEI’s counsel sent me by email a copy of DEI’s Amended Proof of Claim, a true and correct copy of which is attached at **Exhibit 4**. Under the Assignment Agreement (Ex. 3), the Claim was transferred to Seaport effective July 16, 2010.

8. On terms consistent with the parties’ original Trade Claim Confirmation, the Assignment Agreement assigned to Seaport “all of Assignor’s [DEI’s] right, title and interest in and to” the Claim, effective “as of the date of this Assignment.” (*Id.* § 1) Thus, the Claim was transferred to Seaport as of July 16, 2010. The Assignment Agreement also settled and resolved the Seaport Action.

9. In addition to assigning the Claim to Seaport as of July 16, 2010, the Assignment Agreement provided for Seaport to be substituted as the Claim owner before this Court and on the debtor’s books. The Assignment Agreement required Seaport to file a Notice of Transfer in this Court reflecting the Assignment; and required Seaport to deliver its initial payment for the Claim following a 20-day waiting period thereafter. (Ex. 3, Assignment Agreement § 4)

10. In the Evidence of Transfer of Claim attached to the Assignment Agreement, DEI expressly agreed to “waive[] any objection to the transfer of the Assigned Claim to Assignee on the books and records of the Debtor” (Ex. 3, Assignment Agreement at Exhibit A) The Assignment Agreement also states that “[DEI]

stipulates that an order may be entered recognizing this Assignment as an unconditional assignment and [Seaport] herein as the valid owner of the Assigned Claim.” (Ex. 3, Assignment Agreement § 17)

11. The Assignment Agreement reflected the possibility that Deutsche Bank AG or its affiliates (collectively, “Deutsche Bank”) might assert that DEI had promised to sell it the same Claim. DEI generally represented in the Assignment Agreement that it owned the Claim “free and clear of all liens [or] claims . . . of any kind,” and that DEI “has not previously sold or assigned the Assigned Claim.” (Ex. 3, Assignment Agreement § 5(iii), (v)) The agreement, however, specifically excused from such representations any adverse claims by Deutsche Bank that it has or ever had a binding agreement to purchase the Claim:

Notwithstanding the foregoing, none of the representations and warranties contained in this Sections 5 and 6 shall be deemed to have been breached as a result of (i) the existence or threat of any legal proceedings or claims by Deutsche Bank, its designees, assignees, transferees, or affiliates, alleging that a binding agreement in respect of the sale of all or any portion of the Claim exists or existed between Assignor and any such party, making any other similar allegation, (ii) any testimony presented or evidence associated with any such proceedings, claims, or allegations, and/or (iii) an order or finding by any court that such binding agreement existed (collectively, “Third Party Broker Claims”).

(Ex. 3, Assignment Agreement § 7(a) (emphasis added))

12. Separately, the Assignment Agreement provided both parties with conditional termination rights if, after the Notice of Transfer was filed, Deutsche Bank objected to the transfer of the Claim to Seaport. DEI’s termination rights would be triggered only by Deutsche Bank specifically filing a claim against DEI “objecting to the transfer” and doing so within a specific time period:

If during the 20 Day Period [after the Notice of Transfer appears

on the docket], Deutsche Bank, AG or any of its affiliates, assignees or designees (collectively, “Deutsche Bank”) files or serves a notice with the Bankruptcy Court objecting to the transfer, then Assignee may elect in a written notice to Assignor within two (2) calendar days after such 20 Day Period to not pay the Purchase Price to Assignor and to terminate and declare this Assignment and Settlement Agreement null and void. Further, in the event during the 20 Day Period Deutsche Bank does file or serve a claim against Assignor objecting to the transfer, then Assignor may elect in a written notice to Assignee within two (2) calendar days after such 20 Day Period to terminate and declare this Assignment and Settlement Agreement null and void, in which event Assignee shall be relieved of its obligation to pay the Purchase Price to Assignor hereunder.

(Ex. 3, Assignment Agreement § 4 (emphasis added))

13. Seaport filed the Notice of Transfer, executed in relevant part by DEI, in this Court on July 20, 2010. A true and correct copy of the Notice of Transfer filed at Dkt. No. 6377 is attached at **Exhibit 5**. As set forth in the Evidence of Transfer of Claim attached to the Notice of Transfer filed with this Court, DEI expressly “waive[d] any objection to the transfer of the Assigned Claim to Assignee on the books and records of the Debtor” (Ex. 5, Notice of Transfer at p.2)

14. Under Section 4 of the Assignment Agreement, the 20-Day Period for Deutsche Bank to file or serve a claim or notice “objecting to the transfer” was scheduled to, and did, expire August 9, 2010. (Ex. 3, Assignment Agreement § 4) During that period, Deutsche Bank did not file or serve any claim against DEI objecting to the transfer, or seek to prevent or interfere in any manner with the transfer of the Claim.

15. Rather, on August 5, 2010, Deutsche Bank filed a complaint in federal court against DEI seeking only monetary damages. A true and correct copy of the complaint filed by Deutsche Bank (the “Deutsche Complaint”) in *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc.*, No. 10-cv-5910 (PGG) (S.D.N.Y. filed Aug. 5,

2010), is attached at **Exhibit 6**. Deutsche Bank did not file its lawsuit (the “Deutsche Bank Action”) as a related case to the Seaport Action. The Deutsche Bank Action is the subject of DEI’s present Objection.

16. The gist of the Deutsche Bank Action is that DEI breached an agreement to Deutsche Bank regarding the Claim, and caused Deutsche Bank lost profits. The complaint alleges that DEI signed a written “Confirmation” on January 18, 2010 for DEI to sell the Claim to Deutsche Bank, which Confirmation required the parties to close the transaction through a “mutually agreeable Assignment of Claim” and to do so “[a]s soon as practicable.” (Ex. 6, Deutsche Bank Cplt. at ¶¶ 9, 13 & Exhibit B) Deutsche Bank alleges that DEI “materially breached the terms of the contract by failing to close the transaction ‘as soon as practicable’ and failing to deliver the Claim to Deutsche Bank, as promised in the Confirmation.” (*Id.* ¶ 20) Deutsche Bank’s complaint also asserts a second count, a parallel claim for breach of the implied covenant of good faith and fair dealing. (*Id.* ¶¶ 24-31) Deutsche Bank asserts that DEI’s breach cost it the opportunity to sell the Claim at a profit or to collect distributions from the debtor. (*Id.* ¶ 16)

17. Thus, Deutsche Bank’s suit is an action for money damages based on DEI’s failure to assign the Claim to Deutsche Bank “as soon as practicable” after signing the January 2010 agreement. The Deutsche Bank Action does not object to the July 2010 Assignment Agreement with Seaport or to the publicly filed Notice of Transfer.

18. DEI’s counsel notified me of the Deutsche Bank Action by letter dated Friday, August 6, 2010, and threatened to exercise DEI’s termination rights under Section 4 of the Assignment Agreement. A true and correct copy of DEI counsel’s August 6, 2010 letter is attached at **Exhibit 7**.

19. I responded on behalf of Seaport by letter on Tuesday, August 10, 2010, disagreeing that DEI had any right to terminate the Assignment Agreement. A true and correct copy of my August 10, 2010 letter to DEI's counsel is attached at **Exhibit 8**. Although any formal termination notice would have been due on August 11, 2010, I agreed with DEI's counsel to extend that deadline to August 18, 2010, without prejudice to Seaport's position that no termination rights had been triggered. A true and correct copy of my August 11, 2010 email confirming this agreement is attached at **Exhibit 9**.

20. DEI nonetheless filed the instant Objection on August 10, 2010 and sent a letter to me purporting to terminate the Assignment Agreement on August 18, 2010. A true and correct copy of DEI's August 18, 2010 letter is attached at **Exhibit 10**.

21. On August 17, 2010, DEI wrote to District Judge Deborah A. Batts, who presides over the Seaport Action, and to District Judge Paul G. Gardephe, who presides over the Deutsche Bank Action, and requested that the two actions be consolidated. A true and correct copy of DEI's August 17, 2010 letter to Judges Batts and Gardephe is attached at **Exhibit 11**.

22. Deutsche opposed DEI's request for consolidation by letter dated August 19, 2010. A true and correct copy of Deutsche Bank's August 19, 2010 letter to Judges Batts and Gardephe is attached at **Exhibit 12**. On behalf of Seaport, my firm submitted a letter opposing DEI's request. A true and correct copy of my firm's August 20, 2010 letter to Judges Batts and Gardephe is attached at **Exhibit 13**.

23. On August 27, 2010, I appeared for a scheduling conference in the Seaport Action before Judge Batts. Counsel for DEI also appeared. A true and correct copy of

the order issued by Judge Batts following the conference, Docket No. 10 in the Seaport Action, is attached at **Exhibit 14**.

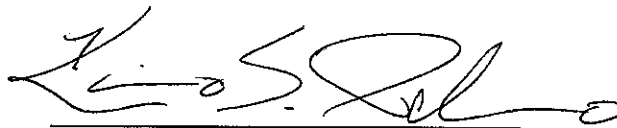
24. Judge Batts ordered that the Deutsche Bank Action not be transferred to her and not be consolidated with the Seaport Action.

25. Judge Batts also declined to enter a case schedule for the Seaport Action, and instead suspended the case for 90 days to allow this Court to decide the merits of DEI's Objection to the notice of transfer. Specifically, Judge Batts ordered that the Seaport Action "be put on suspense for 90 days to await determination by Judge Gerber on July 2010 Settlement and Assignment objection, which could resolve this case." (Ex. 14, Order dated Aug. 27, 2010 at 2) Judge Batts further ordered the parties to report back to her after the 90-day period on the status of the instant Objection. (*Id.*)

26. Because DEI had no right to terminate the Assignment Agreement, I submit this Declaration in support of Seaport's Response to DEI's Objection.

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

New York, New York
Dated September 10, 2010.



Kimo S. Peluso

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Exhibit 1

JUDGE BATT'S

10 CV 1599

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SEAPORT GROUP LLC,

Plaintiff,

-against-

DALE EARNHARDT, INC.,

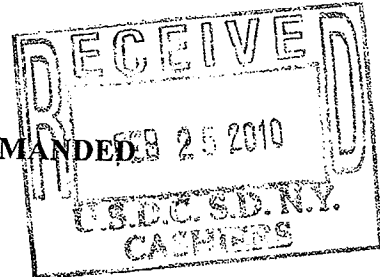
Defendant.

Case No. 10-cv-

COMPLAINT

ECF CASE

JURY TRIAL DEMANDED



Plaintiff The Seaport Group LLC ("Seaport"), by its attorneys Manatt Phelps & Phillips, LLP, complaining in this action against Defendant Dale Earnhardt, Inc. ("DEI"), alleges as follows:

NATURE OF THE ACTION

1. Seaport's causes of action arise from DEI's renegeing on a written agreement to sell Seaport a claim pending in the General Motors bankruptcy action. After DEI signed a binding contract to sell its claim to Seaport, the value of the claim increased dramatically, and DEI refused to honor the deal. Seaport seeks specific performance of the contract, or alternatively, money damages for its losses resulting from DEI's breach.

THE PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Seaport is a limited liability company organized under the laws of the state of Delaware with its principal place of business in New York, New York. Its has two members - Michael Meagher, a resident of New York, New York, and Stephen Smith, a resident of Palm Beach, Florida. Among other things, Seaport buys and sells trade claims, including creditor claims pending in bankruptcy court. Seaport has purchased, sold and brokered the sale

of numerous such claims, and it is well-known among the companies that handle such transactions.

3. Upon information and belief, Defendant DEI is a corporation organized under the laws of the state of North Carolina with its principal place of business in Mooresville, North Carolina. Upon information and belief, DEI is a part owner of the professional NASCAR racing team Earnhardt Ganassi Racing and is also in the business of selling products related to, and licensing the name and likeness of, late professional NASCAR racer, Dale Earnhardt.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and this dispute is between citizens of different states.

5. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events and omissions giving rise to Plaintiff Seaport's claims occurred in this judicial district.

FACTUAL BACKGROUND

6. On November 18, 2009, DEI entered into an agreement to sell to Seaport a bankruptcy claim that DEI had filed in the bankruptcy action captioned *In re Motors Liquidation Co., et al., f/k/a General Motors Corp., et al.*, U.S. Bankr. Ct. S.D.N.Y., Ch. 11 No. 09-50026 (REG) (the "Bankruptcy Action"). DEI had filed its claim in the Bankruptcy Action, claim number 1649, for a value of \$3,252,706.89 (the "Claim").

7. The agreement was memorialized in a Trade Claim Confirmation (the "Confirmation") executed by the parties. A copy of the executed Confirmation is attached hereto as Exhibit 1.

8. As set forth in the Confirmation, DEI agreed to sell Seaport the full value of its Claim, in two components mirroring the proof of claim that DEI had filed with the Bankruptcy Court. This included (i) an unsecured bankruptcy claim for \$2,419,373.56 for a sale price to Seaport equal to 10% of that claim, and (ii) an administrative priority claim for \$833,333.33 for a sale price to Seaport equal to 10% of that claim plus an additional 55% upon formal recognition as an administrative priority claim by the Bankruptcy Court.

9. In short, DEI agreed to sell Seaport its \$3,252,706.89 Claim for a price of no more than \$783,604.02.

10. As set forth in the Confirmation, the parties agreed to close the sale of the claim "as soon as practicable, but no later than December 15, 2009." (Ex. 1, Confirmation at 2)

11. The Confirmation also provides that the sale of the claim was subject to and contingent upon "the execution and delivery of an Assignment of Claim Agreement reasonably acceptable to both Buyer and Seller." (Ex. 1, Confirmation at 2)

12. By its terms, the Confirmation is governed by New York law. (*Id.* at 3)

13. Both the express terms of the Confirmation and the implied covenant of good faith and fair dealing required DEI to attempt to close the sale of its claim "as soon as practicable," to cooperate with Seaport in drafting and executing an Assignment of Claim Agreement, and not to reject any such assignment unreasonably.

14. On November 20, 2009, two days after the parties executed the Confirmation, Seaport delivered to DEI a proposed Assignment of Claim Agreement (the "Assignment"). The Assignment spelled out standard terms that Seaport and other experienced parties have used in purchasing and selling countless claims from creditors in other bankruptcy proceedings.

15. Having secured DEI's agreement to close the sale "as soon as practicable," and having provided DEI with a draft Assignment two days after the parties executed the Confirmation, Seaport fully expected DEI would execute the Assignment as written or provide any proposed changes quickly, and well in advance of the December 15, 2009 closing deadline.

16. DEI, however, did not respond to or propose any changes to the draft Assignment for weeks. Starting in early December, Seaport reminded DEI to send any proposed changes to the draft Assignment, so that the parties could close the transaction.

17. Finally, on December 15, 2009, the day of the Confirmation's originally agreed-upon closing deadline, DEI sent Seaport a long list of objections to Seaport's draft Assignment. DEI told Seaport that DEI was "surprised" by many provisions in the draft Assignment, although DEI had never previously expressed any such sentiment, despite receiving the draft nearly a month beforehand and several reminders from Seaport thereafter.

18. Thus, DEI first complained about the terms of the Assignment drafted by Seaport on the settlement date deadline. Its complaints and demands, however, were unreasonable and not made in good faith. Among its objections, DEI refused to agree to refund the purchase price if the Claims were "avoided, subordinated, reduced, disputed objected to, enjoined or otherwise impaired," even though the Confirmation expressly stated that such a provision would be part of the Assignment. *See* Ex. 1, Confirmation at 2 (requiring DEI to repay the purchase price, with interest, "in the event all or any part of the Claims is or becomes subject to an impairment or is disallowed, rejected, reduced or objected to, in whole or in part"). As another example, DEI demanded that Seaport modify the assignment to include a venue provision for DEI's home state of North Carolina, even though the parties had already agreed that New York law would govern the Confirmation, and even though the Bankruptcy Action

(and the Claim) is pending in the Southern District of New York. Many of DEI's other comments were similarly unreasonable and were not made in good faith.

19. Also on December 15, 2009, DEI made clear that it was not honoring its commitment under the Confirmation. DEI informed Seaport that it was negotiating a new deal with General Motors, including General Motors' request that DEI reduce its Claim. DEI further stated that DEI's top priority was to maintain its relationship with General Motors.

20. In fact, as later disclosed by DEI, the negotiations with General Motors contemplated by DEI could reduce its \$3.25 million Claim to as little as \$100,000 or eliminate it altogether. Any such reduction was directly contrary to the Confirmation, in which DEI promised to assign to Seaport the full value of the \$3.25 million Claim submitted in the Bankruptcy Action.

21. By these negotiations with General Motors and its announcement to Seaport on December 15, 2009 that DEI intended to reduce or eliminate its Claim, DEI anticipatorily breached and repudiated the Confirmation.

22. Consistent with its announced intention not to honor the Confirmation and to reduce or eliminate its Claim, DEI's December 15, 2009 comments included the warning, "we are looking into mistake defenses," referring to a defense to any breach of contract action by Seaport.

23. In response to DEI's long list of objections to the draft Assignment, Seaport requested that DEI prepare a revised draft reflecting the changes and specific language acceptable to DEI for Seaport's review. DEI refused even this basic request.

24. In response to DEI's announcement of its negotiations with General Motors, Seaport reminded DEI by telephone and email that it had already sold its Claim to Seaport as a result of the November 18, 2009 Confirmation.

25. On February 2, 2010, DEI announced by email, "We have decided not to pursue / sell our claim in the interest of the new agreement with GM." Thus, DEI purported to use the Claim in negotiations with General Motors rather than honor its agreement to sell the Claim to Seaport.

26. For the first time, DEI also declared that the Confirmation was not binding because the parties had not executed an Assignment by the closing deadline.

27. To the extent the Confirmation was conditioned on a final Assignment, that condition was waived or excused because DEI refused to cooperate in, unreasonably interfered with, and made impossible the execution of an Assignment, including in the following ways: (i) DEI neglected for weeks to respond to the draft Assignment prepared by Seaport; (ii) DEI waited until the day of the Confirmation's closing deadline to provide numerous objections to Seaport's draft Assignment; (iii) DEI intentionally delayed and avoided delivering and executing an Assignment so that it could back out of the Confirmation and reduce its claim to appease General Motors; (iv) DEI otherwise prevented the parties from closing the transaction "as soon as practicable," as set forth in the Confirmation; (v) DEI refused even to provide Seaport with a proposed revision to the draft Assignment; and (vi) DEI's objections to the Assignment were unreasonable, contrary to the parties' intent expressed in the Confirmation and not made in good faith.

28. Any condition of an Assignment was also excused because DEI anticipatorily breached and repudiated the Confirmation, including on or before December 15, 2009. DEI's

anticipatory breach and repudiation was complete and covered the entire performance to which DEI was bound under the Confirmation. As DEI admitted in an email on February 2, 2010 regarding the parties' earlier discussion of the draft Assignment, "It is moot since we are not selling our claim"

29. Seaport was damaged by DEI's breach, including, losing the opportunity to sell the Claim to another buyer at a profit, and/or losing the ability to collect any distribution that General Motors has made, will make or could have made on the Claim.

COUNT I (Specific Performance)

30. Seaport repeats and realleges each allegation contained in paragraphs 1 through 29 as if fully set forth herein.

31. Seaport seeks specific performance of the Confirmation, requiring DEI to deliver and assign to Seaport its \$3,252,706.89 Claim in the Bankruptcy Action.

32. Seaport and DEI entered into a binding contract, the November 18, 2009 Confirmation, for the sale of the full value of its Claim to Seaport.

33. Seaport duly performed, and has been at all times ready, willing and able to perform, its obligations under the contract.

34. DEI materially breached the terms of the Confirmation by refusing to assign its Claim to Seaport, by failing to close the transaction "as soon as practicable," by failing to deliver or execute an Assignment reasonably acceptable to Seaport and DEI, and by negotiating with General Motors to reduce or eliminate the Claim.

35. Defendant DEI expressly repudiated the Confirmation, including on or before December 15, 2009.

36. On information and belief, it is within DEI's power to perform its obligations.

37. Any unsatisfied conditions on which DEI's performance was conditioned were excused because DEI unreasonably interfered with and made impossible the satisfaction of those conditions. Any conditions were likewise excused because DEI repudiated the parties' agreement.

38. Seaport has been injured and is being injured by DEI's failure to perform its obligations under the Confirmation.

39. For DEI's breach of the parties' agreement, Seaport has no adequate remedy at law.

40. Therefore, Seaport is entitled to equitable relief of specific performance in the form of an order compelling DEI to perform its obligations under the Confirmation and assigning DEI's Claim to Seaport *nunc pro tunc* to December 15, 2009.

COUNT II (Breach of Contract)

41. Seaport repeats and realleges each allegation contained in paragraphs 1 through 40 as if fully set forth herein.

42. Seaport and DEI entered into a binding contract for the sale of the full value of its Claim to Seaport, to wit the Confirmation.

43. Seaport duly performed, and was at all times ready, willing and able to perform, its obligations under the Confirmation.

44. DEI materially breached the terms of the Confirmation by refusing to assign its Claim to Seaport, by failing to close the transaction "as soon as practicable," by failing to attempt to deliver or execute an Assignment reasonably acceptable to Seaport and DEI, and by negotiating with General Motors to reduce or eliminate the Claim.

45. Defendant DEI expressly repudiated the Confirmation, including on or before December 15, 2009.

46. Any unsatisfied conditions on which DEI's performance was conditioned were excused because DEI unreasonably interfered with and made impossible the satisfaction of those conditions. Any conditions were likewise excused because DEI repudiated the parties' agreement.

47. By reason of DEI's breach, Seaport has been damaged in an amount to be determined at trial, but in no event less than \$2,469,102.87.

48. Therefore, DEI is liable to Seaport for breach of contract and, as alternative relief, Seaport is entitled to an award of monetary damages.

COUNT III (Breach of the Implied Covenant of Good Faith and Fair Dealing)

49. Seaport repeats and realleges each allegation contained in paragraphs 1 through 48 as if fully set forth herein.

50. Seaport and DEI entered into a binding contract for the sale of the full value of its Claim to Seaport, to wit the Confirmation.

51. Seaport at all times acted in good faith in its performance of the Confirmation.

52. DEI acted in bad faith and unfairly to deprive Seaport of the Claim or to prevent Seaport from carrying out the closing. DEI's bad faith and unfair conduct includes, but is not limited to, the following: (i) DEI neglected for weeks to respond to the draft Assignment prepared by Seaport; (ii) DEI waited until the day of the Confirmation's closing deadline to provide numerous objections to Seaport's draft Assignment; (iii) DEI intentionally delayed and avoided delivering and executing an Assignment so that it could back out of the Confirmation and reduce its claim to appease General Motors; (iv) DEI otherwise prevented the parties from

closing the transaction "as soon as practicable," as set forth in the Confirmation; (v) DEI refused to provide Seaport with a proposed revision to the draft Assignment; (vi) DEI's objections to the Assignment were unreasonable and not made in good faith; (vii) DEI otherwise made execution and delivery of an Assignment impossible; and (viii) DEI negotiated with General Motors to reduce or eliminate the Claim that it had already sold, in full, to Seaport.

53. By its conduct, DEI deprived Seaport of the benefit of its bargain under the Confirmation and/or prevented Seaport from carrying out the terms of the Confirmation.

54. DEI's conduct was contrary to the intent of the parties as expressed in the Confirmation.

55. By reason of DEI's breach, Seaport has been damaged in an amount to be determined at trial, but in no event less than \$2,469,102.87.

56. Therefore, DEI is therefore liable to Seaport for breach of the implied covenant of good faith and fair dealing.

COUNT IV (Declaratory Relief)

57. Seaport repeats and realleges each allegation contained in paragraphs 1 through 58 as if fully set forth herein.

58. A real and justiciable controversy exists between Seaport and DEI in that (a) DEI contends that the Confirmation is not binding because the parties did not execute and deliver a reasonably acceptable Assignment of Claim Agreement; whereas (b) Seaport contends that the Confirmation is binding and any requirement of an Assignment of Claim Agreement is excused because DEI interfered with and rendered impossible the execution or delivery of an Assignment of Claim Agreement and/or because DEI anticipatorily breached and repudiated the Confirmation Agreement.

59. Seaport seeks a judgment declaring that the Confirmation is binding and that any conditions on DEI's performance are excused.

PRAYER FOR RELIEF


WHEREFORE, Seaport demands judgment against DEI awarding Seaport the following relief:

- (a) specific performance of the Confirmation and an order compelling DEI to deliver the Claim to Seaport;
- (b) in the alternative, monetary damages in an amount to be determined at trial, but in no event less than \$2,469,102.87;
- (c) a judicial declaration that the Confirmation is binding, that any conditions on DEI's performance are excused;
- (d) awarding Seaport its costs and disbursements for this action;
- (e) awarding Seaport interest on any money judgment; and
- (f) awarding such other and further relief as the Court may deem just and proper.

Dated: New York, New York.
February 25, 2010

Respectfully submitted,

MANATT PHELPS & PHILLIPS, LLP

By: 

Ronald G. Blum
Kimo S. Peluso

7 Times Square
New York, NY 10036
(212) 790-4500

Attorneys for Plaintiff The Seaport Group LLC

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EXHIBITS

A

The Seaport Group

The Seaport Group, LLC
360 Madison Avenue 22nd Floor
New York NY 10017
T 212 616 7700 F 212 616 7733

Trade Claim Trade Confirmation

To: Dale Earnhardt, Inc.
Attention: Christian Chad Warpula, Executive Vice President & General Counsel
Phone No.: (704) 662-8926
Fax No.: (704) 663-7945
E-mail: cwarpula@dei-zone.com

From: The Seaport Group LLC
360 Madison Ave, 22nd Floor
New York, NY 10017
Attention: Scott Friedberg
Phone: (212) 616-7728
Fax: (646) 786-4071
E-mail: sfriedberg@theseaportgroup.com

We are pleased to confirm the following transaction:

Trade Date: November 18, 2009

Seller: Dale Earnhardt, Inc

Buyer: The Seaport Group LLC

Debtor: Motors Liquidation Company (f/k/a General Motors Corporation)

Bankruptcy Case: In re Motors Liquidation Company, et al., Case No. 09-50026 (REG) (jointly administered), filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court")

Claims:

1. Seller's valid and enforceable claims (Claim No.: 1649) against the Debtor in the amount of \$2,419,373.56 ("Unsecured Claim Amount") arising from that certain executory contract referred to as Motorsports Team Agreement dated October 26, 2007 and as amended on February 3, 2009 between Seller and Debtor.
2. Seller's valid and enforceable claim (Claim No.: 1649) against the Debtor arising from contractual payments due and owed post-commencement of the Bankruptcy Case in the aggregate amount of \$833,333.33 (the "Admin Claim Amount") and allowable as an administrative priority claim.

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The Seaport Group, LLC
360 Madison Avenue 22nd Floor
New York NY 10017
T 212 616 7700 F 212 616 7733

Unsecured Claim Purchase Rate: 10%

Admin Claim Purchase Rate: 10% (additional 55% if/ when formally recognized by the Bankruptcy Court)

Purchase Prices: Buyer shall pay to Seller a Purchase Price for the Unsecured Claim on the Settlement Date equal to Unsecured Claim Purchase Rate multiplied by the Unsecured Claim Amount.

Buyer shall pay to Seller a Purchase Price for the Admin Claim on the Settlement Date equal to Admin Claim Purchase Rate multiplied by the Admin Claim Amount. If/ when the Admin Claim is formally recognized by the Bankruptcy Court as an Administrative Priority claim an additional payment will be made by Buyer to Seller as defined in the Admin Claim Purchase Rate section above

Form of Purchase: Assignment via Assignment of Claim Agreement.

Settlement: Payment of the Purchase Prices shall be made by wire transfer in immediately available funds on the date of execution of the Assignment of Claim Agreement.

Settlement Date: As soon as practicable, but no later than December 15th, 2009.

Other Terms of Trade: Parties agree that this transaction shall also be subject to and contingent upon (i) Buyer's due diligence of the Claims and Seller's delivery to Buyer of any consents or lien releases as may be reasonably requested by Buyer and (ii) the execution and delivery of an Assignment of Claim Agreement reasonably acceptable to both Buyer and Seller.

The Assignment of Claim Agreement shall contain a provision stating that in the event all or any part of the Claims is or becomes subject to an impairment or is disallowed, rejected, reduced or objected to, in whole or in part, (collectively, a "Disallowance"), Seller agrees to repay, on demand of Buyer, an amount equal to the amount of the respective Claim subject to the Disallowance multiplied by the applicable Purchase Rate, plus interest at 5% per annum from the date of the Assignment of Claim Agreement to the date of repayment. For

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the sake of clarity, this Disallowance refers only to the amount and validity of the Allowed Claims, and not the distribution on account of the Allowed Claims.

Any and all payments or distributions made on account of the Claims from and after the Trade Date are for the benefit of Buyer.

Seller shall have the right, but not the obligation, in coordination with the Buyer, to contest any disallowance or rejection of its Claims. Buyer shall take no action without the prior consent of the Seller which results in the disallowance or reduction of the Claims, in whole or in part. If such disallowance or reduction is not resolved within 90 days from the date first objected to by Debtor, Buyer shall have the right to demand repayment of the Purchase Price plus interest to that point.

Non-Reliance:

Each of Buyer and Seller represents and warrants to the other that (i) it is a sophisticated buyer or seller (as the case may be) with respect to the transaction, (ii) it has, or has access to, such information as it deems appropriate under the circumstances concerning, among other things, the Debtor's businesses and financial condition, and the Bankruptcy Case to make an informed decision regarding the transfer of the Claims, and (iii) it has independently and without reliance on the other party, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into the transaction. Each of Buyer and Seller acknowledges that the other has not given it any investment advice or opinion on whether the transaction is prudent.

Governing Law:

This trade confirmation shall be governed by and construed in accordance with the laws of the State of New York.

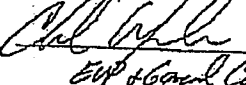
Binding Effect:

This Trade Confirmation may be executed in multiple counterparts and such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by telecopier, facsimile or other form of electronic transmission of an executed counterpart of this Trade Confirmation shall be deemed to constitute due and sufficient delivery of such counterpart.

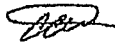
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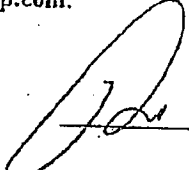
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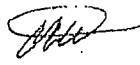
Please provide the signature of a duly authorized officer or other signatory where indicated below and return this letter to the attention of Jay Sommer, at the following fax number: (212) 616-7733 or by email to jsommer@theseaportgroup.com.

DALE EARNHARDT, INC.

EVP & General Counsel

By: Dale Earnhardt, Inc.
Name: Christian Chad Warpula
Title: EVP & General Counsel

11/19/09 


as Buyer

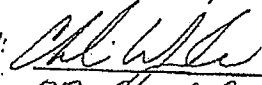
By: The Seaport Group LLC
Name: Jonathan Silverman Steve Smith 
Title: General Counsel Managing Member

TheSeaportGroup


The Seaport Group, LLC
360 Madison Avenue 22nd Floor
New York, NY 10017
T 212 616 7700 F 212 616 7733

Please provide the signature of a duly authorized officer or other signatory where indicated below and return this letter to the attention of Jay Sommer, at the following fax number: (212) 616-7733 or by email to jsommer@theseaportgroup.com.

Dale Earnhardt, Inc.

BY:  as Seller
EVP & General Counsel

By: Dale Earnhardt, Inc.
Name: Christian Chad Warpula
Title: EVP & General Counsel

 as Buyer

By: The Seaport Group LLC
Name: Steve Smith
Title: Managing Member

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SEAPORT GROUP LLC,)
)
 Plaintiff,)
)
 v.)
)
)
 DALE EARNHARDT, INC.,)
)
 Defendant.)

CASE NO. 10-CV-1599 (DAB)

ANSWER

Defendant Dale Earnhardt, Inc. (“DEI”), by and through its attorneys, Mintz Levin Cohn Ferris Glovsky and Popeo, P.C., as and for its answer and affirmative defenses to the Complaint (“Complaint”) filed by Plaintiff Seaport Group LLC (“Seaport or “Plaintiff”), states as follows:

1. DEI denies the allegations contained in Paragraph one of the Complaint.
2. DEI denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph two of the Complaint.
3. DEI admits the allegations contained in Paragraph three of the Complaint.
4. DEI admits the allegations contained in Paragraph four of the Complaint.
5. DEI admits the allegations contained in Paragraph five of the Complaint.
6. DEI denies the allegations contained in Paragraph six of the Complaint, except to the extent that it admits that it filed a proof of claim in the GM Bankruptcy Action (the “Claim”).
7. DEI denies the allegations contained in Paragraph seven of the Complaint, except to the extent that DEI admits that, on November 20, 2009, it signed a Trade Confirmation (the “Confirmation”). Further, DEI respectfully refers the Court to the Confirmation for its terms and conditions.
8. DEI denies the allegations contained in Paragraph eight of the Complaint and respectfully refers the Court to the Confirmation for its terms and conditions.

9. DEI denies the allegations contained in Paragraph nine of the Complaint.

10. DEI denies the allegations contained in Paragraph ten of the Complaint and respectfully refers the Court to the Confirmation for its terms and conditions.

11. DEI admits the allegations in Paragraph eleven of the Complaint.

12. DEI admits the allegations in Paragraph twelve and respectfully refers the Court to the Confirmation for its terms and conditions.

13. DEI denies the allegations contained in Paragraph thirteen of the Complaint and respectfully refers the Court to the Confirmation for its terms and conditions.

14. DEI denies the allegations contained in Paragraph fourteen of the Complaint.

15. DEI denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph fifteen of the Complaint.

16. DEI denies the allegations contained in Paragraph sixteen of the Complaint.

17. DEI denies the allegations contained in Paragraph seventeen of the Complaint, except to the extent that DEI admits that DEI admits that it provided Seaport with additional comments on December 15, 2009.

18. DEI denies the allegations contained in Paragraph eighteen of the Complaint.

19. DEI denies the allegations contained in Paragraph nineteen of the Complaint except to the extent that it did communicate with GM relating to the reduction of DEI's claim.

20. DEI denies the allegations contained in Paragraph twenty of the Complaint, except to the extent that it did communicate with GM relating to the reduction of DEI's claim.

21. DEI denies the allegations contained in Paragraph twenty-one of the Complaint.

22. DEI denies the allegations contained in Paragraph twenty-two of the Complaint.

23. DEI denies the allegations contained in Paragraph twenty-three of the Complaint, except to the extent that DEI requested that the parties discuss DEI's Discussion Points before incurring additional outside legal expenses to revise the Assignment.

24. DEI denies the allegations contained in Paragraph twenty-four of the Complaint.

25. DEI denies the allegations contained in Paragraph twenty-five of the Complaint and respectfully refers the court its February 2, 2010 email for its content.

26. DEI denies the allegations contained in Paragraph twenty-six of the Complaint.

27. DEI denies the allegations contained in Paragraph twenty-seven of the Complaint.

28. DEI denies the allegations contained in Paragraph twenty-eight of the Complaint.

29. DEI denies the allegations contained in Paragraph twenty-nine of the Complaint.

COUNT I

30. DEI repeats and realleges each and every allegation contained in Paragraph one through twenty-nine of the Complaint as though set forth fully herein.

31. DEI denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph thirty-one of the Complaint.

32. DEI denies the allegations contained in Paragraph thirty-two of the Complaint.

33. DEI denies the allegations contained in Paragraph thirty-three of the Complaint.

34. DEI denies the allegations contained in Paragraph thirty-four of the Complaint.

35. DEI denies the allegations contained in Paragraph thirty-five of the Complaint.

36. DEI denies the allegations contained in Paragraph thirty-six of the Complaint.

37. DEI denies the allegations contained in Paragraph thirty-seven of the Complaint.

38. DEI denies the allegations contained in Paragraph thirty-eight of the Complaint.

39. DEI denies the allegations contained in Paragraph thirty-nine of the Complaint.

40. DEI denies the allegations contained in Paragraph forty of the Complaint.

COUNT II

41. DEI repeats and realleges each and every allegation contained in Paragraph one through forty of the Complaint as though set forth fully herein.

42. DEI denies the allegations contained in Paragraph forty-two of the Complaint.

43. DEI denies the allegations contained in Paragraph forty-three of the Complaint.

44. DEI denies the allegations contained in Paragraph forty-four of the Complaint.

45. DEI denies the allegations contained in Paragraph forty-five of the Complaint.

46. DEI denies the allegations contained in Paragraph forty-six of the Complaint.

47. DEI denies the allegations contained in Paragraph forty-seven of the Complaint.

48. DEI denies the allegations contained in Paragraph forty-eight of the Complaint.

COUNT III

49. DEI repeats and realleges each and every allegation contained in Paragraph one through forty-eight of the Complaint as though set forth fully herein.

50. DEI denies the allegations contained in paragraph fifty of the Complaint.

51. DEI denies the allegations contained in paragraph fifty-one of the Complaint.

52. DEI denies the allegations contained in Paragraph fifty-two of the Complaint.

53. DEI denies the allegations contained in Paragraph fifty-three of the Complaint.

54. DEI denies the allegations contained in Paragraph fifty-four of the Complaint.

55. DEI denies the allegations contained in Paragraph fifty-five of the Complaint.

56. DEI denies the allegations contained in Paragraph fifty-six of the Complaint.

COUNT IV

57. DEI repeats and realleges each and every allegation contained in Paragraph one through fifty-six of the Complaint as though set forth fully herein.

58. DEI denies the allegations contained in Paragraph fifty-eight of the Complaint.

59. DEI denies the allegations contained in Paragraph fifty-nine of the Complaint.

FIRST DEFENSE

60. The Complaint fails to state a claim against DEI upon which relief may be granted.

SECOND DEFENSE

61. Seaport's claims are barred by the doctrine of waiver.

THIRD DEFENSE

62. Seaport's claims are precluded by virtue of Seaport's unclean hands.

FOURTH DEFENSE

63. Seaport's claims are precluded by the doctrine of equitable estoppel.

FIFTH DEFENSE

64. Seaport's claims are barred by the doctrine of laches.

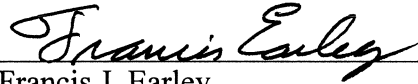
SIXTH DEFENSE

65. The Confirmation at issue in this matter expired pursuant to its terms.

WHEREFORE, Defendant Dale Earnhardt, Inc. respectfully demands judgment in its favor as follows: (1) dismissing the Complaint with prejudice in its entirety and (2) awarding it such other and further relief that this Court deems just and proper.

Dated: New York, New York
April 30, 2010

MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO, P.C.



Francis J. Earley
Dominic J. Picca

666 Third Avenue, 25th Floor
New York, New York 10017
(212) 935-3000

Attorneys for Dale Earnhardt, Inc.

Exhibit 3

ASSIGNMENT OF CLAIM AND SETTLEMENT AGREEMENT

This Assignment of Claim and Settlement Agreement (this "Assignment and Settlement Agreement" or "Assignment") is entered into between Dale Earnhardt, Inc. and its successors and assigns ("Assignor"), a North Carolina corporation located at 1675 Dale Earnhardt Highway, No. 3, Mooresville, North Carolina 28115 and The Seaport Group LLC and its successors and assigns ("Assignee"), a Delaware limited liability company with an address at 360 Madison Avenue, New York, New York 10017 as of July 16, 2010. Each of Assignor and Assignee is a "Party" to this Assignment and Settlement Agreement, and Assignor and Assignee are collectively the "Parties."

WHEREAS, on or about November 18, 2009, Assignor and Assignee entered into a Trade Claim Confirmation;

WHEREAS, a dispute arose among the Parties regarding the November 18, 2009 Trade Claim Confirmation;

WHEREAS, on or about February 25, 2010, Assignee filed an action in United States District Court for the Southern District of New York, styled *The Seaport Group LLC v. Dale Earnhardt, Inc.*, No. 10-cv-1599 (the "Action");

WHEREAS, the Parties wish to resolve their dispute and to fully and finally settle the Action;

WHEREFORE, the Parties hereby agree as follows:

1. Assignor for good and valuable consideration the sufficiency of which is hereby acknowledged, hereby, subject to the terms of this Assignment and Settlement Agreement, sells, transfers and assigns to Assignee, as of the date of this Assignment, all of Assignor's right, title and interest in and to, or arising under or in connection with, the claim of Assignor (the "Claim") against Motors Liquidation Company (f/k/a General Motors Corporation) (the "Debtor"), the debtor-in-possession in Case No. 09-50026 (the "Case") under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 et. seq.) (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") represented by the proof of claim filed by Assignor in the Case in the aggregate amount of \$3,252,706.80, but which amount was incorrect due to a typographical error and which proof of claim was subsequently amended (prior to the date hereof) in the corrected amount of \$3,031,180.00 (such proof of claim, as amended, the "Proof of Claim", the amount of the claim set forth in the amended Proof of Claim, the "Assigned Claim Amount"), including without limitation, (i) all of Assignor's right, title and interest in and to the Proof of Claim filed in respect of the Claim; (ii) all of Assignor's right, title and interest in said receivables, all agreements, instruments, invoices, purchase orders and other documents evidencing, or relating to the Claim (the "Documents"); (iii) all of Assignor's right to receive principal, interest, fees, expenses, damages, penalties and other amounts in respect of or in connection with the Claim; and (iv) all other claims, causes of action against the Debtor, its affiliates, any guarantor or other third party, together with voting and other rights and benefits arising from, under or relating to any of the foregoing receivables, including, without limitation, all of Assignor's rights to receive cash, securities, instruments and/or other property or

distributions issued in connection with any of the foregoing or under the Bankruptcy Code (collectively, the “Assigned Claim”). The Claim includes all “Cure Amounts” as such term is defined in Section 365 of the Bankruptcy Code. For the avoidance of doubt and subject to the terms and conditions set forth herein, Assignee shall not assume, and Assignor shall retain, any and all obligation or liability under or in respect of the Assigned Claim existing on or prior to the date of this Assignment.

2. As used herein, (a) a “Final Order” shall mean an order of a court which has not been reversed, stayed, modified, amended or vacated and as to which (i) any appeal taken, petition for certiorari or motion for rehearing or reconsideration that has been filed, has been finally determined or dismissed or (ii) the time to appeal, seek certiorari or move for reconsideration or rehearing has expired and no appeal, petition for certiorari or motion for reconsideration or rehearing has been timely filed; (b) “Schedule of Liabilities” shall mean the Schedule of Liabilities prepared and filed by the Debtor in the Case pursuant to Section 521 of the Bankruptcy Code in accordance with Rule 1007 of the Bankruptcy Rules, and (c) “Business Day” means any day that is not a Saturday, Sunday, or any other day on which commercial banks in New York, New York are authorized or required by law to be closed.

3. On the Payment Date (as defined in Paragraph 4 below), in accordance with the wire transfer instructions set forth on Schedule A hereto, Assignee shall pay to Assignor an amount (the “Purchase Price”) equal to the rate of cents per dollar set forth as the “Unsecured Purchase Rate” on Schedule B, multiplied by the amount of the Assigned Claim Amount currently allowed. Subject to Section 4 below, Assignor shall hold the Purchase Price. The wire transfer shall also include an additional five thousand dollars (\$5,000) settlement payment, which shall not be included in the Purchase Price for purposes of this Agreement or included in any Repayment Amount as set forth herein. In addition, if the alleged administrative portion of the Assigned Claim of \$833,333.33 is allowed in part or in full as an administrative Claim, Assignee will, within five (5) Business Days of official notification from the Debtor or its representatives that the administrative Claim is allowed and in accordance with the wire transfer instructions set forth on Schedule A hereto, pay to Assignor an amount (the “Additional Purchase Price”) equal to the rate of cents per dollar set forth as the “Additional Administrative Purchase Rate” on Schedule B, multiplied by the amount of the allowed administrative Claim portion (the “Administrative Claim”).

4. Within two (2) Business Days of the execution and delivery of this Assignment, Assignee shall cause to be filed a Notice of Transfer, or similarly titled document, in the Bankruptcy Court. For twenty (20) calendar days (such period, the “20 Day Period”) commencing the day after the Notice of Transfer or similarly titled document appears on the docket of the Bankruptcy Court, Assignee shall hold and reserve the Purchase Price for payment hereunder. If during the 20 Day Period, Deutsche Bank, AG or any of its affiliates, assignees or designees (collectively, “Deutsche Bank”) files or serves a notice with the Bankruptcy Court objecting to the transfer, then Assignee may elect in a written notice to Assignor within two (2) calendar days after such 20 Day Period to not pay the Purchase Price to Assignor and to terminate and declare this Assignment and Settlement Agreement null and void. Further, in the event during the 20 Day Period Deutsche Bank does file or serve a claim against Assignor objecting to the transfer, then Assignor may elect in a written notice to Assignee within two (2) calendar days after such 20 Day Period to terminate and declare this Assignment and Settlement

Agreement null and void, in which event Assignee shall be relieved of its obligation to pay the Purchase Price to Assignor hereunder. For the avoidance of doubt, any termination of this Assignment and Settlement Agreement shall have no effect on the Action. In the event that neither Assignor, nor Assignee has notified the other in writing of termination of this Assignment and Settlement Agreement in accordance with the foregoing within two (2) calendar days of the end of the 20 Day Period Assignee shall immediately pay the Purchase Price to Assignor (the "Payment Date"), which payment shall then be subject to all of the provisions of this Assignment and Settlement Agreement.

5. Assignor represents and warrants to Assignee that: (i) it is duly authorized and empowered to execute and perform this Assignment; (ii) this Assignment constitutes a valid, legal and binding agreement of Assignor, enforceable against it in accordance with its terms; (iii) Assignor is the sole owner of and has good legal and beneficial title to the Assigned Claim, free and clear of all liens, claims, security interests or encumbrances of any kind or nature whatsoever, including without limitation, pursuant to any factoring or other financing agreement; (iv) Assignor has obtained and delivered to Assignee releases (in form and substance satisfactory to Assignee) by any secured party of any security interest in the Assigned Claim held by such party; (v) Assignor has not previously sold or assigned the Assigned Claim, in whole or in part, to any party; (vi) neither the execution, delivery or performance of this Assignment and Settlement Agreement nor the consummation of the transactions contemplated hereby, will violate any law, rule, regulation, order, agreement, or instrument affecting the Assignor or the Assigned Claim; (vii) the Assigned Claim is a valid, allowable, undisputed, noncontingent, liquidated claim in the Case in the amount of \$3,031,180.00; (viii) no objections have been actually received by Assignor or threatened to Assignor in respect of the Assigned Claim; (ix) no notice of any avoidance action under Section 547 of the Bankruptcy Code has been actually received by Assignor and no such actions have been threatened to Assignor in respect of the Assigned Claim, or any portion thereof; (x) no payment has been received by or on behalf of Assignor in full or partial satisfaction of the Claim; (xi) Assignor has not engaged in any acts or conduct that might result in Assignee receiving proportionately less in payments or distributions under, or less favorable treatment (including the timing of payments or distributions) for, the Assigned Claim than other general unsecured creditors holding the same type or class of claims; (xii) Assignor is not an insider within the meaning of Section 101(31) of the Bankruptcy Code, and it is not now nor has it ever been a member of any creditors' committee appointed in the Case; (xiii) at Assignee's expense, Assignor agrees to execute and deliver, or to cause to be executed and delivered, all such instruments and documents, and to take all such action as Assignee may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of, this Assignment and Settlement Agreement; (xiv) Assignor has delivered to Assignee true, correct and complete copies of the Documents; and (xv) Assignor has duly and timely filed a Proof of Claim in the Case; provided, that Assignor thereafter amended the Proof of Claim as set forth in Section 1 above.

6. Assignee represents and warrants that (i) it is duly authorized and empowered to execute and perform this Assignment; (ii) this Assignment constitutes a valid, legal and binding agreement of Assignee, enforceable against it in accordance with its terms; (iii) it has fully and finally conducted all due diligence investigation of the Assigned Claim, Documents, and Assigned Claim Amount prior to the effective date hereof, and hereby waives any right to reject,

dispute, object to, offset or otherwise raise defenses to its obligations hereunder based on its review of same after the effective date hereof.

7. (a) Notwithstanding the foregoing, none of the representations and warranties contained in this Sections 5 and 6 shall be deemed to have been breached as a result of (i) the existence or threat of any legal proceedings or claims by Deutsche Bank, its designees, assignees, transferees, or affiliates, alleging that a binding agreement in respect of the sale of all or any portion of the Claim exists or existed between Assignor and any such party, making any other similar allegation, (ii) any testimony presented or evidence associated with any such proceedings, claims, or allegations, and/or (iii) an order or finding by any court that such binding agreement existed (collectively, "Third Party Broker Claims").

(b) In the event of any Third Party Broker Claims, Assignee shall have the option, at its sole discretion, to treat the assertion or existence of any Third Party Broker Claims as a Disallowance of the Assigned Claim for purposes of the repayment remedies set forth in Section 9, below.

(c) In the event that all or any part of the Assigned Claim for which Assignee has paid Assignor pursuant to this Assignment of Claim is subject to a Final Order requiring specific performance to transfer any or all of the Assigned Claim to another party with respect to any Third Party Broker Claim (an "Order for Specific Performance"), then upon an Order for Specific Performance, the Assigned Claim subject to such Order for Specific Performance shall be a Disallowance for purposes of the repayment remedies set forth in Section 9, below.

8. Assignor is aware that the consideration being paid by Assignee hereunder may differ both in kind and amount from the amount ultimately distributed with respect to the Assigned Claim pursuant to the Bankruptcy Code or otherwise. Assignor represents that it has adequate information concerning the financial condition of the Debtor and the Case to make an informed decision regarding the sale of the Assigned Claim and that it has independently and without reliance on Assignee, and based on such information as Assignor has deemed appropriate, made its own decision to enter into this Assignment and Settlement Agreement. Assignor and Assignee may each have access to or possess confidential material information regarding the Debtor not known to the other, including, without limitation, information received from the Debtor on a confidential basis or information received on a privileged basis from legal counsel and financial advisors representing the Debtor. Each party hereby waives any claim against the other party deriving from or relating to any assertion that they did not have access to the same confidential information. Assignor acknowledges that Assignee may receive on a current basis material non-public information about Debtor, which is not known by Assignor. Notwithstanding Assignee not disclosing such confidential information to Assignor, Assignor desires to enter into this Assignment and Assignee shall have no liability whatsoever to Assignor based on Assignee's use, knowledge, possession or non-disclosure of such information and Assignor releases Assignee from liability therefrom.

9. (a) In the event that all or any part of the Assigned Claim for which Assignee has paid Assignor pursuant to this Assignment is disallowed, avoided, subordinated, reduced, objected to, or otherwise impaired, in whole or in part, or if an order is entered in the Court disapproving the transfer of all or any part of Claim, or if the Court does not substitute Assignee

for Assignor as the holder of the Claim or if payments or distributions on the Claim are not made at the same time and in the same manner as any other claim of the same class, for any reason whatsoever or if any or all of the Claim is allowed against any debtor or entity other than the Debtor (any such event or occurrence, a "Disallowance"), Assignor agrees to repay, five (5) Business Days from the request of and at the option of Assignee, an amount equal to (x)(A) that portion of the Assigned Claim subject to the Disallowance (the "Disallowed Claim") multiplied by (B) the applicable Purchase Rate, plus (y) interest on such amount at five percent (5%) per annum from the applicable date or dates of Assignee's payment to the date of repayment, excluding any time period between Disallowance and request of repayment by Assignee (the "Repayment Amount"). If any action is taken that may have the result of causing the Disallowance of the Claim, in whole or in part (the "Disallowance Action") and Assignor asserts its right (pursuant to Section 12 below) to contest the Disallowance Action, then Assignee agrees to delay any demand for the Repayment Amount for a period of 90 days after such Disallowance Action is commenced. If the Disallowance Action is NOT resolved within 90 days of the commencement of such action, Assignee shall have the sole option to demand a termination of this Assignment and shall be entitled to restitution of the Purchase Price plus five percent (5%) per annum. Upon Assignee's receipt of the Repayment Amount, (i) Assignor and Assignee shall release each other of all and any obligations or liabilities regarding this Assignment, and (ii) Assignee hereby agrees that the Assigned Claim, or such portion thereof, subject to the Disallowance is immediately, fully and irrevocably assigned back to Assignor (the "Reassigned Claim"), and Assignee shall take all such prompt other action necessary to effectuate such reassignment back to Assignor. All rights herein granted with respect to the Assigned Claim shall immediately terminate with respect to the Reassigned Claim on the date of the Repayment Amount. For the sake of clarity, the term "Disallowance" refers only to the disallowance of the amount and validity of the Assigned Claim, and not the amount of distribution or payout with regard to the allowed Assigned Claim even if less than the face amount of the Assigned Claim Amount.

(b) For the avoidance of doubt, in the event that the portion of the Assigned Claim that is alleged to be administrative is re-classified as general unsecured, such re-classification shall not constitute a Disallowance.

10. In the event of a Disallowance or any breach of this Assignment and Settlement Agreement, Assignee acknowledges and agrees that its sole and exclusive remedies, in lieu of all other rights and remedies at law, in equity or otherwise, will be specific performance of Assignor's obligations under this Assignment and Settlement Agreement or, at the option of assignee, as a liquidated damage and not as a penalty, the repayment of the Repayment Amount. IN NO EVENT WILL A PARTY, OR ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS, AGENTS, ASSIGNS OR SUCCESSORS-IN-INTEREST BE LIABLE TO ANY OTHER PARTY FOR ANY LOSS OF PROFITS, OR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Assignor agrees that in the event Assignor shall receive payments or distributions or notices with respect to or relating to the Assigned Claim after the date hereof, Assignor shall accept the same as Assignee's agent and shall hold the same in trust on behalf of and for the sole

benefit of Assignee, and shall promptly deliver the same forthwith to Assignee in the same form received (free of any withholding, set-off, claim or deduction of any kind, except to the extent Assignee has not paid any monies due and owing to Assignor, in which event Assignor can offset such amounts due to it against the amounts due under this Section 11 to Assignee or withhold same until Assignee has paid such amounts due to Assignor), within five (5) Business Days in the case of cash and within ten (10) Business Days in the case of securities, which are in good deliverable form, with the endorsement of Assignor (without recourse, representations or warranties except as set forth herein) when necessary or appropriate. To the extent that the payment distribution made by the Debtor on account of the Assigned Claim is in the form of securities (the "Securities Distribution") and to the extent such Securities Distribution is issued in the name of Assignor, then within two (2) Business Days of Assignor's receipt of such Securities Distribution, Assignor shall, at Assignee's expense, take whatever steps are reasonably necessary to have such Securities Distribution reissued to or the ownership thereof transferred to Assignee.

12. Assignor hereby irrevocably appoints Assignee with full power of substitution as its true and lawful attorney and authorizes Assignee to act in Assignor's name, place and stead, to demand, sue for, compromise and recover all such sums of money which now are, or may hereafter become due and payable necessary to enforce the Assigned Claim and the Assignor's rights thereunder or related thereto pursuant to this Assignment and Settlement Agreement. Assignor agrees that the powers granted by this paragraph are discretionary in nature and exercisable at the sole option of Assignee. Assignee shall have no obligation to take any action to prove, defend, demand or take any action with respect to the Assigned Claim or otherwise in the Case; provided, that Assignee shall take no affirmative action to impair or cause a Disallowance of the Assigned Claim, in whole or in part. In the event of a Disallowance, Assignor shall assist Assignee (at Assignee's expense) in the defense of the Disallowed Claim. Assignor agrees at Assignee's expense to execute, acknowledge and deliver all such further certificates, instruments and other documents, and if requested by Assignee prepare a proof of claim, and to take all such further action as may be reasonably necessary or appropriate to effect assignment of the Assigned Claim and all interests therein to Assignee, including without limitation the "Evidence of Transfer of Claim" attached as Exhibit A. Notwithstanding the foregoing, Assignor shall have the right, in coordination with Assignee, to contest any Disallowance of the Assigned Claim.

13. If this agreement has not been terminated pursuant to Paragraph 4, then within three (3) business days after the Payment Date, the Parties shall, through their respective counsel, execute a Stipulation of Dismissal of the Action, with prejudice, in the form attached hereto as Exhibit B. Thereafter, Assignor, or Assignor's counsel, shall immediately file Stipulation of Dismissal of the Action. Pending the effectiveness of such dismissal, and thereafter, the Parties shall forbear from asserting, commencing, filing, prosecuting or otherwise attempting to recover any relief in the Action, other than as ordered by the court or as necessary to avoid default.

14. As of the date of this Assignment and Settlement Agreement, and without the need for any further act by any Party, and without a separate release being executed, (i) Assignor shall have, and shall be deemed to have fully, finally and forever released, waived relinquished and discharged Assignee from all Released/Waived Actions (as defined below) that it, whether directly, representatively, derivatively or in any other capacity, ever had, now has, or hereafter

can, shall or may have against Assignee; and (ii) Assignee shall have, and shall be deemed to have fully, finally and forever released, waived relinquished and discharged Assignor from all Released/Waived Actions that it, whether directly, representatively, derivatively or in any other capacity, ever had, now have, or hereafter can, shall or may have against Assignor.

(a) “Released/Waived Actions” means all claims, rights, causes of action, notes, debts, accounts payable, monies due, rights of reimbursement or contribution, demands, judgments, suits, matters and issues, known or unknown, whether individual, class, derivative, representative, legal, equitable, or any other type, or in any other capacity, of a releasing party, arising or accruing from the beginning of the world to the date of this Assignment and Settlement Agreement, whether due now or due in the future, whether known or unknown, including claims that may be incapable of discovery until hereafter, that arise out of or relate to the Assigned Claim or that were asserted or could have been asserted in the Action, including in any counterclaims that could have been asserted by Assignor.

(b) Notwithstanding anything above to the contrary, the Released/Waived Actions shall not include a Party’s covenants, obligations, representations, commitments and duties under this Assignment and Settlement Agreement or any action based on any breach of this Assignment and Settlement Agreement.

(c) Each reference to a Party as a releasor or releasee shall include his or its past and present related or affiliated entities or joint ventures, successors and assigns, and their respective employees, officers, directors, agents and attorneys.

(d) Each Party hereby expressly agrees that the above release may include claims that the Party does not know or does not suspect exist, including claims that, if known by him or it, would have materially affected his or its willingness to execute this Settlement and Assignment Agreement, and each Party expressly waives his or its rights under any common law or statutory law or rule inconsistent with such release of unknown claims.

15. All representations, warranties, covenants and agreements contained herein shall survive the execution and delivery of this Assignment and the purchase and sale of the Assigned Claim and the payment of the Purchase Price, but shall expire on the earlier of (i) the date of Repayment, and (ii) allowance of the Assigned Claim. Notwithstanding anything to the contrary, the releases set forth in Section 14, above, shall survive the expiration of this Assignment and Settlement Agreement. This Assignment shall inure to the benefit of, be binding upon and enforceable by the parties hereto and their respective successors and assigns. This Assignment and Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law principles.

16. EACH PARTY TO THIS ASSIGNMENT AND SETTLEMENT AGREEMENT HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK, COUNTY OF NEW YORK AND OF THE BANKRUPTCY COURT IN ANY ACTION TO ENFORCE, INTERPRET OR CONSTRUE ANY PROVISION OF THIS ASSIGNMENT AND SETTLEMENT AGREEMENT OR OF ANY OTHER AGREEMENT OR DOCUMENT DELIVERED IN CONNECTION WITH THIS ASSIGNMENT AND SETTLEMENT

AGREEMENT, AND ALSO HEREBY IRREVOCABLY WAIVES ANY DEFENSE OF IMPROPER VENUE, FORUM NON CONVENIENS OR LACK OF PERSONAL JURISDICTION TO ANY SUCH ACTION BROUGHT IN SUCH COURTS. EACH PARTY FURTHER IRREVOCABLY AGREES THAT ANY ACTION TO ENFORCE, INTERPRET OR CONSTRUE ANY PROVISIONS OF THIS ASSIGNMENT AND SETTLEMENT AGREEMENT WILL BE BROUGHT ONLY IN SUCH COURTS AND EACH PARTY WAIVES ITS RIGHT TO TRIAL BY JURY.

17. Assignee hereby agrees to give Assignor prompt notice of any notices, disputes, objections, or hearings related to the Assigned Claim. Any inadvertent failure by Assignee to provide such notice shall not constitute a breach of this Assignment. Assignor stipulates that an order may be entered recognizing this Assignment as an unconditional assignment and the Assignee herein as the valid owner of the Assigned Claim.

18. This Assignment and Settlement Agreement shall constitute the complete agreement of the parties hereto with respect to the subject matters referred to herein and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations of every nature whatsoever with respect thereto, all of which have become merged and finally integrated into this Assignment and Settlement Agreement. This Assignment and Settlement Agreement cannot be amended, modified, or supplemented except by an instrument in writing executed by both parties hereto. By executing this Assignment and Settlement Agreement, the Parties represent that, except for those statements, representations, and promises contained in this Assignment and Settlement Agreement, neither they nor the attorneys acting on their behalf have made or relied upon any assumption, statement, representation, omission or promise in entering into this Assignment and Settlement Agreement.

19. This Assignment and Settlement Agreement may be executed by telecopy in multiple counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by telecopier of this Assignment and Settlement Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. Each fully executed counterpart of this Assignment and Settlement Agreement shall be deemed to be a duplicate original.

20. It is expressly understood and agreed that this Assignment and Settlement Agreement shall not be construed as an admission of wrongdoing, or an admission as to any of the factual allegations made in the Action, by the Parties or anyone else, and each of the Parties expressly denies that it has engaged in any wrongdoing, negligence, illegal act or tortious conduct of any type or nature.

21. Assignor and Assignee agree to maintain the confidentiality of this Assignment and Settlement Agreement, including the form and structure of the within agreement and any drafts thereof, including but not limited to maintaining such confidentiality with respect to Debtor, except to the extent required by applicable laws, regulations, or rules of any stock exchange, or by the order of any court; provided that either party may disclose this Assignment and the transactions contemplated hereby to permitted assignees hereunder; provided further, either party may disclose this Assignment and the transactions contemplated hereby to permitted

assignees hereunder, or to their retained legal and other professional consultants, provided that such parties shall be obligated to maintain the confidentiality provisions contained herein.

IN WITNESS WHEREOF, the undersigned has duly executed this Assignment and Settlement Agreement by its duly authorized representative dated as of July 16, 2010.

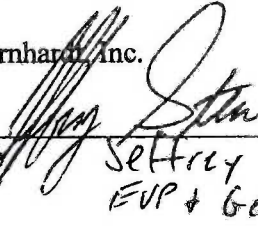
ASSIGNOR

Dale Earnhardt, Inc.

By: _____

Name:

Title:


Jeffrey Steiner
EVP + General Manager

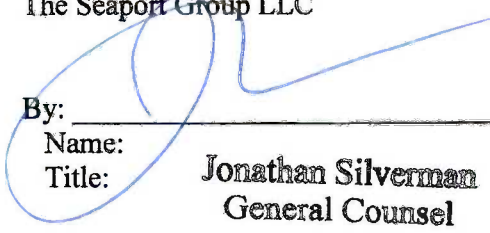
ASSIGNEE:

The Seaport Group LLC

By: _____

Name:

Title:


Jonathan Silverman
General Counsel 7/16/10

**SCHEDULE A TO
ASSIGNMENT OF CLAIM**

Payment and Delivery Instructions

To Assignor:

Notices and Deliveries:

Dale Earnhardt, Inc.
1675 Dale Earnhardt Highway #3
 Mooresville, NC 28115

Attention: Jeffrey P. Steiner
Phone: 704-662-8003
Fax: 704-663-7945
jsteiner@dei-zone.com

Wire Transfer Instructions:

Bank – Bank of America
Bank Address – New York, NY
Bank Telephone No. – 617-434-4425
Account name – Mintz Levin Cohn Ferris Glovsky and Popeo, PC IOLTA Account
Account number – 000053466888
Routing number – 026009593
Reference – Francis J. Earley, internal client-matter: 41190-001
Contact Address – Linda Shea, Finance Dept., Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C., One Financial Center, Boston, MA 02111
Contact Telephone – 617-348-4817

To Assignee:

Notices and Deliveries:

The Seaport Group LLC
360 Madison Avenue, 22nd Floor
New York, NY 10017

Attention: Jonathan R. Silverman
Phone: 212-616-7713
email: jsilverman@theseaportgroup.com

**SCHEDULE B TO
ASSIGNMENT OF CLAIM**

Purchase Rate

Unsecured Purchase Rate:

10%

Additional Administrative Purchase Rate:

55%

**EXHIBIT A TO
ASSIGNMENT OF CLAIM**

EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, Dale Earnhardt, Inc. ("Assignor") hereby unconditionally and irrevocably sells, transfers and assigns to The Seaport Group LLC ("Assignee") all of its right, title, interest, claims and causes of action in and to, or arising under or in connection with, claims in the aggregate amount of \$3,031,180.00 (the "Assigned Claim"), against Motors Liquidation Company (f/k/a General Motors Corporation) ("Debtor"), the debtor-in-possession in Case No. 09-50026 (the "Case") under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 et. seq.) (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and any and all proofs of claim filed by Assignor with the Bankruptcy Court in respect of the foregoing claim.

Assignor hereby waives any objection to the transfer of the Assigned Claim to Assignee on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring to Assignee the foregoing claim and recognizing the Assignee as the sole owner and holder of the Assigned Claim. Assignor further directs the Debtor, the Bankruptcy Court and all other interested parties that all further notices relating to the Assigned Claim, and all payments or distributions of money or property in respect of claim, shall be delivered or made to the Assignee.

IN WITNESS WHEREOF, this Evidence of Transfer of Claim is executed on July __, 2010.

By: _____
Name of person signing _____
Title of person signing _____

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SEAPORT GROUP LLC,

Plaintiff,

-against-

DALE EARNHARDT, INC.,

Defendant.

Case No. 10-cv-1599

ECF CASE

STIPULATION OF DISMISSAL

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, Plaintiff The Seaport Group LLC and Defendant Dale Earnhardt, Inc., by their undersigned counsel, hereby stipulate and agree that the above action, including all claims and counterclaims asserted therein, is dismissed with prejudice in its entirety, with each party to bear its own costs, attorney fees and expenses except that nothing herein shall affect the parties' rights to enforce the terms of the Assignment of Claim and Settlement Agreement, dated July __, 2010.

Dated: July __, 2010

Jointly submitted and agreed to by:
MANATT, PHELPS & PHILLIPS, LLP

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.

By: _____

Ronald G. Blum

Kimo S. Peluso

7 Times Square
New York, New York 10036

By: _____

Dominic Picca

Frank Earley

666 Third Avenue
New York, New York 10017

Attorneys for Plaintiff The Seaport
Group LLC

Attorneys for Defendant Dale Earnhardt, Inc.

Exhibit 4

COPY



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor (Check Only One): <input checked="" type="checkbox"/> Motors Liquidation Company (Fk/a General Motors Corporation) <input type="checkbox"/> MLCS, LLC (Fk/a Saturn, LLC) <input type="checkbox"/> MLCS Distribution Corporation (Fk/a Saturn Distribution Corporation) <input type="checkbox"/> MLC of Harlem, Inc. (Fk/a Chevrolet-Saturn of Harlem, Inc.)		Case No. 09-50026 (REG) 09-50027 (REG) 09-50028 (REG) 09-13558 (REG)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9); see Item # 51. All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Dale Earnhardt, Inc.		<div style="text-align: center;"> </div> <p>If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form. EXCEPT AS FOLLOWS. If the amount shown is listed as DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.</p>
Name and address where notices should be sent: Dale Earnhardt, Inc. Jeff Steiner, EVP & GM 1675 Dale Earnhardt Highway Mooresville, NC 28115-8330		
Telephone number: 704-662-8000 Email Address:		
Name and address where payment should be sent (if different from above): N/A		
<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: 1649 <i>(if known)</i> Filed on: 09/29/2009		
<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.		
1. Amount of Claim as of Date Case Filed, June 1, 2009: \$3,031,180.00 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
2. Basis for Claim: Motorsports Team Agreement, dated Oct. 26, 2007, by and between General (See instruction #2 on reverse side) Motors Corp. & Dale Earnhardt, Inc. as amended. Copy available		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Value of goods received by the Debtor within 20 days before the date of commencement of the case. 11 U.S.C. § 503(b)(9) (§ 507(a)(2)). <input checked="" type="checkbox"/> Other. Specify applicable paragraph of 11 U.S.C. § 507(a)(2). Amount entitled to priority: \$ 833,333.33 <i>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
3. Last four digits of any number by which creditor identifies debtor: N/A upon request. 3a. Debtor may have scheduled account as: N/A (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: ____% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.		
Date: 7/12/10 Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 		FOR COURT USE ONLY

CONTRACT SUMMARY

GENERAL MOTORS CORPORATION - DALE EARNHARDT, INC. MOTORSPORTS TEAM AGREEMENT 2008 - 2009

TEAM CASH SUPPORT

Sprint Cup	\$8MM (\$2.5MM per car x 2 cars; \$2.5MM on 3rd car paid \$69,444.44 per race; \$500k on 4th car paid \$13,888.88 per race (36 race schedule))
Nationwide	\$300k (\$150k per car x 2 cars paid \$4,285.71 per race (based on 35 race schedule))
Payment Terms	4 installments on March 1, May 1, August 1 and November 1

PARTS SUPPORT

Sprint Cup	\$1.1MM (\$275k per car x 2 cars; \$275k on 3rd and 4th car paid \$7,638.89 per race (based on 36 race schedule))
Nationwide	\$300k (\$150k per car x 2 cars paid \$4,285.71 per race (based on 35 race schedule))

ENGINEERING CREDIT

\$1,333,333 credit per year with Pratt & Miller Engineering regardless of number of teams (expires if not used in calendar year)

AERO TESTING CREDIT

\$900k credit per year regardless of number of teams

MANUFACTURER CARS

36 per year, comprised of 30 standard vehicles and 6 dually trucks

2008				2009			
Description	Amount Due	Amount Paid	Deficit	Description	Amount Due	Amount Paid	Deficit
TEAM CASH SUPPORT							
CUP 1 (#1 car)	\$2,500,000	\$2,500,000	\$0	CUP 1 (#1 car)	\$2,500,000	\$1,250,000	(\$1,250,000)
CUP 2 (#01 car)	\$2,500,000	\$2,500,000	\$0	CUP 2 (#42 car)	\$2,500,000	\$1,250,000	(\$1,250,000)
CUP 3 (#8 car) x 36 races	\$2,500,000	\$2,500,000	\$0	CUP 3 (#8 car) x 7 races	\$486,111	\$486,111	\$0
CUP 4 (#15 car) x 36 races	\$500,000	\$500,000	\$0	CUP 4 (#34 car) x 1 race	\$13,889	\$13,889	\$0
	<u>\$8,000,000</u>	<u>\$8,000,000</u>	<u>\$0</u>		<u>\$5,500,000</u>	<u>\$3,000,000</u>	<u>(\$2,500,000)</u>
NNS 1 (#8 car) x 2 races	\$8,571	\$8,571	\$0	NNS 1 (no races)	\$0	\$0	\$0
NNS 2 (0 races)	\$0	\$0	\$0	NNS 2 (no races)	\$0	\$0	\$0
	<u>\$8,571</u>	<u>\$8,571</u>	<u>\$0</u>		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Subtotals	<u>\$8,008,571</u>	<u>\$8,008,571</u>	<u>\$0</u>		<u>\$5,500,000</u>	<u>\$3,000,000</u>	<u>(\$2,500,000)</u>
PARTS SUPPORT (see Exhibit B)				\$61,112			
CUP 1 (#1 car)	\$275,000	\$275,000	\$0	CUP 1 (#1 car)	\$275,000	\$187,910	(\$87,090)
CUP 2 (#01 car)	\$275,000	\$275,000	\$0	CUP 2 (#42 car)	\$275,000	\$187,910	(\$87,090)
CUP 3 (#8 car)	\$275,000	\$275,000	\$0	CUP 3 (#8 car) x 7 races	\$53,473	\$53,473	\$0
CUP 4 (#15 car) x 36 races	\$275,000	\$275,000	\$0	CUP 4 (#34 car) x 1 race	\$7,639	\$7,639	\$0
	<u>\$1,100,000</u>	<u>\$1,100,000</u>	<u>\$0</u>		<u>\$611,112</u>	<u>\$436,932</u>	<u>(\$174,180)</u>
NNS 1 (1 race)	\$4,286	\$4,286	\$0	NNS 1 (0 races)	\$0	\$0	\$0
NNS 2 (0 races)	\$0	\$0	\$0	NNS 2 (0 races)	\$0	\$0	\$0
	<u>\$4,286</u>	<u>\$4,286</u>	<u>\$0</u>		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Subtotals	<u>\$1,104,286</u>	<u>\$1,104,286</u>	<u>\$0</u>		<u>\$611,112</u>	<u>\$436,932</u>	<u>(\$174,180)</u>
ENGINEERING SUPPORT ⁽¹⁾							
2008 Year	\$1,333,000	\$1,333,000	\$0 ⁽²⁾	2009 Year	\$1,333,000	\$1,333,000	\$0
	<u>\$1,333,000</u>	<u>\$1,333,000</u>	<u>\$0</u>		<u>\$1,333,000</u>	<u>\$1,333,000</u>	<u>\$0</u>
AERODYNAMIC TESTING (see Exhibit C)							
2008 Year	\$900,000	\$900,000	\$0	2009 Year	\$900,000	\$543,000	(\$357,000)
	<u>\$900,000</u>	<u>\$900,000</u>	<u>\$0</u>		<u>\$900,000</u>	<u>\$543,000</u>	<u>(\$357,000)</u>
MANUFACTURER VEHICLES							
Regular Vehicles	30	30	0	Regular Vehicles	30	30	0
Dually Trucks	6	6	0	Dually Trucks	6	6	0
Total	<u>36</u>	<u>36</u>	<u>0</u>	Total	<u>36</u>	<u>36</u>	<u>0</u>
TOTAL	<u>\$11,345,857</u>	<u>\$11,345,857</u>	<u>\$0</u>		<u>\$8,344,112</u>	<u>\$4,769,932</u>	<u>(\$3,031,180)</u> (see Exhibit A)

(1) Engineering Credit was not suspended or cut by GM, thus no deficiency.

(2) Any 2008 Engineering Credit deficit does not carry over to 2009. Aero and parts credits carry over from year to year.

Attachments	Exhibit A	Claim Summary
	Exhibit B	2009 Parts Summary
	Exhibit C	2009 Aerodynamic Testing Summary

EXHIBIT A
CLAIMS SUMMARY

SUMMARY OF CLAIMS

Cash	\$1,250,000 per car x 2 =	(\$2,500,000.00)
2009 Parts	Total credit, less amt used =	(\$174,180.00)
Engineering Credit	Credit not cut; still available	\$0.00
Aero Credit	Total credit, less amt used =	(\$357,000.00)
Total		(\$3,031,180.00)

TOTAL ADMINISTRATIVE EXPENSE CLAIM	\$833,333.33
TOTAL GENERAL UNSECURED CLAIM	\$2,197,846.67
TOTAL CLAIM	\$3,031,180.00

CALCULATION OF ADMINISTRATIVE EXPENSE CLAIM FOR CASH PAYMENT

Cash	
Administrative Expense Claim	\$833,333.33
General Unsecured Claim	<u>\$1,666,666.67</u>
	\$2,500,000.00

No.	Date	2009 Sprint Cup Race Event	Amt Paid/Due		Notes
			#1 Car	#42 Car	
1	15-Feb	Daytona	\$69,444.44	\$69,444.44	
2	22-Feb	Fontana	\$69,444.44	\$69,444.44	
3	1-Mar	Las Vegas	\$69,444.44	\$69,444.44	
4	8-Mar	Atlanta	\$69,444.44	\$69,444.44	
5	22-Mar	Bristol	\$69,444.44	\$69,444.44	
6	29-Mar	Martinsville	\$69,444.44	\$69,444.44	
7	5-Apr	Texas	\$69,444.44	\$69,444.44	
8	18-Apr	Phoenix	\$69,444.44	\$69,444.44	
9	26-Apr	Talladega	\$69,444.44	\$69,444.44	
			<u>\$625,000.00</u>	<u>\$625,000.00</u>	March 1 Installment of \$1,250,000.00
10	2-May	Richmond	\$69,444.44	\$69,444.44	
11	9-May	Darlington	\$69,444.44	\$69,444.44	
12	25-May	Charlotte	\$69,444.44	\$69,444.44	
13	31-May	Dover	\$69,444.44	\$69,444.44	
		GM PETITION DATE - JUNE 1, 2009			
14	7-Jun	Pocono	\$69,444.44	\$69,444.44	
15	14-Jun	Michigan	\$69,444.44	\$69,444.44	
16	21-Jun	Sonoma	\$69,444.44	\$69,444.44	
17	28-Jun	Loudon	\$69,444.44	\$69,444.44	
18	4-Jul	Daytona	\$69,444.44	\$69,444.44	
			<u>\$625,000.00</u>	<u>\$625,000.00</u>	May 1 Installment of \$1,250,000.00
19	11-Jul	Chicago	\$69,444.44	\$69,444.44	Admin Exp Claim
20	26-Jul	Indianapolis	\$69,444.44	\$69,444.44	Admin Exp Claim
21	3-Aug	Pocono	\$69,444.44	\$69,444.44	Admin Exp Claim
22	10-Aug	Watkins Glen	\$69,444.44	\$69,444.44	Admin Exp Claim
23	16-Aug	Michigan	\$69,444.44	\$69,444.44	Admin Exp Claim
24	22-Aug	Bristol	\$69,444.44	\$69,444.44	Admin Exp Claim
					<u>Total</u> <u>\$833,333.33</u>
		EFFECTIVE DATE OF REJECTION - AUGUST 26, 2009			
25	6-Sep	Atlanta	\$69,444.44	\$69,444.44	Unsecured Claim
26	12-Sep	Richmond	\$69,444.44	\$69,444.44	Unsecured Claim
27	20-Sep	Loudon	\$69,444.44	\$69,444.44	Unsecured Claim
			<u>\$625,000.00</u>	<u>\$625,000.00</u>	<u>\$416,666.67</u>
28	27-Sep	Dover	\$69,444.44	\$69,444.44	Unsecured Claim
29	4-Oct	Kansas	\$69,444.44	\$69,444.44	Unsecured Claim
30	11-Oct	Fontana	\$69,444.44	\$69,444.44	Unsecured Claim
31	17-Oct	Charlotte	\$69,444.44	\$69,444.44	Unsecured Claim
32	25-Oct	Martinsville	\$69,444.44	\$69,444.44	Unsecured Claim
33	1-Nov	Talladega	\$69,444.44	\$69,444.44	Unsecured Claim
34	8-Nov	Texas	\$69,444.44	\$69,444.44	Unsecured Claim
35	15-Nov	Phoenix	\$69,444.44	\$69,444.44	Unsecured Claim
36	22-Nov	Homestead	\$69,444.44	\$69,444.44	Unsecured Claim
			<u>\$625,000.00</u>	<u>\$625,000.00</u>	<u>\$1,250,000.00</u>
		Total Paid	\$1,250,000.00	\$1,250,000.00	<u>Total</u> <u>\$1,666,666.67</u>
		Total Due	\$1,250,000.00	\$1,250,000.00	

EXHIBIT B
2009 PARTS SUMMARY



RACING

Dale Earnhardt Ent.
1675 CODDLE CREEK HWY.
MOORESVIL
ATTN: RANDY EARNHARDT
704.662.8971

TEAM BUDGET = \$611,112.00
TOTAL SPENDITER = \$436,932.00
REMAINING BUDGET = \$174,180.00

2 cars x \$275,000 = \$ 550,000.00
3rd car (7 races x \$7,638.89) = \$ 53,473.00
4th car (1 race x \$7,638.89) = \$ 7,639.00
Total \$611,112.00

(See footnote 2 to Contract Summary Tab)

DATE SHIPPED	DESCRIPTION PARTS SHIPPED	DEALER NET	DEALER NET ACCUMULATED TOTAL
1-Jan	Budget transferred to ERC Engines	\$350,000.00	\$350,000.00
31-Jan	SHEETMETAL FOR THE MONTH	\$9,685.00	\$359,685.00
	MONTH TOTAL:	\$359,685.00	
	ENGINE PARTS:	\$350,000.00	
	BODY PARTS:	\$9,685.00	
28-Feb	SHEETMETAL FOR THE MONTH	\$17,370.00	\$377,055.00
	MONTH TOTAL:	\$17,370.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$17,370.00	
30-Mar	SHEETMETAL FOR THE MONTH	\$10,510.00	\$387,565.00
	MONTH TOTAL:	\$10,510.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$10,510.00	
30-Apr	SHEETMETAL FOR THE MONTH	\$13,228.00	\$400,793.00
	MONTH TOTAL:	\$13,228.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$13,228.00	
30-May	SHEETMETAL FOR THE MONTH	\$5,675.00	\$406,468.00
	MONTH TOTAL:	\$5,675.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$5,675.00	
30-Jun	SHEETMETAL FOR THE MONTH	\$10,934.00	\$417,402.00
	MONTH TOTAL:	\$10,934.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$10,934.00	
14-Jul	SHEETMETAL FOR THE MONTH	\$19,530.00	\$436,932.00
	MONTH TOTAL:	\$19,530.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$19,530.00	

GM did not cut ECR credit allotment

Attachment to Dale Earnhardt, Inc. Proof of Claim



RACING^{TV}

Dale Earnhardt Ent.

1675 CODDLE CREEK HWY.
MOORESVIL
ATTN: RANDY EARNHARDT
704.662.8971

TEAM BUDGET = \$1,100,000.00
TOTAL SPENDITER = \$1,100,000.00
REMAINING BUDGET = \$0.00

DATE SHIPPED	DESCRIPTION PARTS SHIPPED	DEALER NET	DEALER NET ACCUMULATED TOTAL
1-Jan	Budget transferred to ERC Engines	\$800,000.00	\$800,000.00
31-Jan	SHEETMETAL FOR THE MONTH	\$25,453.00	\$825,453.00
	MONTH TOTAL:	\$825,453.00	
	ENGINE PARTS:	\$800,000.00	
	BODY PARTS:	\$25,453.00	
28-Feb	SHEETMETAL FOR THE MONTH	\$21,427.00	\$846,880.00
	MONTH TOTAL:	\$21,427.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$21,427.00	
30-Mar	SHEETMETAL FOR THE MONTH	\$13,967.00	\$860,847.00
	MONTH TOTAL:	\$13,967.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$13,967.00	
30-Apr	SHEETMETAL FOR THE MONTH	\$22,729.00	\$883,576.00
	MONTH TOTAL:	\$22,729.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$22,729.00	
31-May	SHEETMETAL FOR THE MONTH	\$25,392.00	\$908,968.00
	MONTH TOTAL:	\$25,392.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$25,392.00	
30-Jun	SHEETMETAL FOR THE MONTH	\$14,155.00	\$923,123.00
	MONTH TOTAL:	\$14,155.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$14,155.00	
30-Jul	SHEETMETAL FOR THE MONTH	\$15,728.00	\$938,851.00
	MONTH TOTAL:	\$15,728.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$15,728.00	
30-Aug	SHEETMETAL FOR THE MONTH	\$21,504.00	\$960,355.00
	MONTH TOTAL:	\$21,504.00	
	ENGINE PARTS:	\$0.00	
	BODY PARTS:	\$21,504.00	

Attachment to Dale Earnhardt, Inc. Proof of Claim

30-Sep	SHEETMETAL FOR THE MONTH		\$7,051.00	\$967,406.00
		MONTH TOTAL:	\$7,051.00	
		ENGINE PARTS:	\$0.00	
		BODY PARTS:	\$7,051.00	
30-Oct	SHEETMETAL FOR THE MONTH		\$21,357.00	\$988,763.00
		MONTH TOTAL:	\$21,357.00	
		ENGINE PARTS:	\$0.00	
		BODY PARTS:	\$21,357.00	
30-Nov	SHEETMETAL FOR THE MONTH		\$22,389.00	\$1,011,152.00
		MONTH TOTAL:	\$22,389.00	
		ENGINE PARTS:	\$0.00	
		BODY PARTS:	\$22,389.00	
5-Dec	Budget transferred to ERC Engines		\$62,804.00	\$1,073,956.00
15-Dec	SHEETMETAL FOR THE MONTH		\$26,044.00	\$1,100,000.00
		MONTH TOTAL:	\$88,848.00	
		ENGINE PARTS:	\$62,804.00	
		BODY PARTS:	\$26,044.00	

EXHIBIT C
2009 AERODYNAMIC TESTING SUMMARY

GM Aerodynamic Testing Credit 2009

\$900,000.00

<u>Description</u>	<u>Amount Used</u>	<u>Rate</u>	<u>Unit</u>	<u>Credit Used</u>	<u>Credit Remaining</u>	<u>Notes</u>
Aerodyn	110	\$1,650.00	hr	\$181,500.00	\$718,500.00	Allocated 25 days @ \$250,000 (\$10,000 per day) Represents 13.75 days of 25 days allocated
Windshear	60 hours	\$3,750.00	hr	\$225,000.00	\$493,500.00	Allocated 10 days @ \$375,000 (\$3,750 per day) Represents 6 of 10 days allocated
ARC Scale Model	60 hours	\$1,125.00	hr	\$67,500.00	\$426,000.00	Allocated 80 hours @ \$90,000 (\$1,125 per day)
Scale Model Support	0 hours	\$0.00	hr	\$0.00	\$426,000.00	Allocated \$100,000
Straightline testing	6 days	\$9,000.00	day	\$54,000.00	\$372,000.00	Allocated 10 days @ \$90,000 (\$9,000 per day)
Full Body Car Scans	3 scans	\$5,000.00	scan	\$15,000.00	\$357,000.00	Allocated 3 days @ \$15,000 (\$5,000 per day)
TOTALS				\$543,000.00	\$357,000.00	

Exhibit 5

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

In Re: MOTORS LIQUIDATION COMPANY
Case No: 09-50026 (Jointly Administered)

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NUMBER 46880 (Amends 1649) HAS BEEN FILED IN THIS CASE or deemed filed under 11 U.S.C. 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bank. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

The Seaport Group LLC

Name and address where notices to transferee should be sent:

The Seaport Group, LLC
360 Madison Avenue, 22nd Floor
New York, NY 10017
Attention: General Counsel

Phone: 212-616-7700

Last Four Digits of Acct #: N/A

Name and Address where transferee payments should be sent (if different from above):

Phone: N/A

Last Four Digits of Acct. #: N/A

Name of Transferor:

Dale Earnhardt, Inc.

Court Claim # (if known): **46880 (Amends 1649)**
Amended Proof of Claim Amt: **\$3,031,180.00**
Original Proof of Claim Amt: **\$3,252,706.80**
Date Claim Filed: **09/29/09**
Date Claim Amended: **07/14/10**

Name and Address of Transferor:

Dale Earnhardt, Inc.
1675 Dale Earnhardt Highway #3
Mooresville, NC 28115

Phone: 704-662-8000

Last Four Digits of Acct. #: N/A

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____

Transferee / Transferee's Agent

Jonathan Silverman
General Counsel

7/20/10

Date: _____

7/20/10

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18U.S.C. .152 &3571

--DEADLINE TO OBJECT TO TRANSFER--

The transferor of claim named above is advised that this Notice of Transfer of Claim Other Than for Security has been filed in the clerk's office of this court as evidence of the transfer. Objections must be filed with the court within twenty (20) days of the mailing of this notice. If no objection is timely received by the court, the transferee will be substituted as the original claimant without further order of the court.

Date: _____

CLERK OF THE COURT


EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT

For value received, the adequacy and sufficiency of which are hereby acknowledged, Dale Earnhardt, Inc. ("Assignor") hereby unconditionally and irrevocably sells, transfers and assigns to The Seaport Group LLC ("Assignee") all of its right, title, interest, claims and causes of action in and to, or arising under or in connection with, claims in the aggregate amount of \$3,031,180.00 (the "Assigned Claim"), against Motors Liquidation Company (f/k/a General Motors Corporation) ("Debtor"), the debtor-in-possession in Case No. 09-50026 (the "Case") under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 et. seq.) (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and any and all proofs of claim filed by Assignor with the Bankruptcy Court in respect of the foregoing claim.

Assignor hereby waives any objection to the transfer of the Assigned Claim to Assignee on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring to Assignee the foregoing claim and recognizing the Assignee as the sole owner and holder of the Assigned Claim. Assignor further directs the Debtor, the Bankruptcy Court and all other interested parties that all further notices relating to the Assigned Claim, and all payments or distributions of money or property in respect of claim, shall be delivered or made to the Assignee.

IN WITNESS WHEREOF, this Evidence of Transfer of Claim is executed on July 16, 2010.

By:  Dale Earnhardt, Inc.
Name of person signing Jeffrey Steiner
Title of person signing EVP & GM

THE SEAPORT GROUP LLC

By: 
Jonathan Silverman
General Counsel

7/20/10

COPY




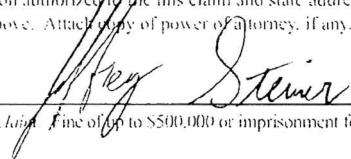
UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
Name of Debtor (Check Only One): <input checked="" type="checkbox"/> Motors Liquidation Company (Fk'a General Motors Corporation) <input type="checkbox"/> MLCS, LLC (Fk'a Saturn, LLC) <input type="checkbox"/> MLCS Distribution Corporation (Fk'a Saturn Distribution Corporation) <input type="checkbox"/> MLC of Harlem, Inc. (Fk'a Chevrolet-Saturn of Harlem, Inc.)		Your Claim is Scheduled As Follows:  If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form. EXCEPT AS FOLLOWS: If the amount shown is listed as DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.
Case No. 09-50026 (REG) 09-50027 (REG) 09-50028 (REG) 09-13558 (REG)		
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Dale Earnhardt, Inc.	<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: <u>1649</u> <small>(If known)</small> Filed on: <u>09/29/2009</u>	
Name and address where notices should be sent: Dale Earnhardt, Inc. Jeff Steiner, EVP & GM 1675 Dale Earnhardt Highway Mooreville, NC 28115-8330		
Telephone number: 704-662-8000 Email Address:		
Name and address where payment should be sent (if different from above): N/A	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Telephone number:		
1. Amount of Claim as of Date Case Filed, June 1, 2009: <u>\$ 3,031,180.00</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Value of goods received by the Debtor within 20 days before the date of commencement of the case. 11 U.S.C. § 503(b)(9) & 507(a)(2). <input checked="" type="checkbox"/> Other. Specify applicable paragraph of 11 U.S.C. § 507(a)(2). Amount entitled to priority: <u>\$ 833,333.33</u> <small>* Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
2. Basis for Claim: Motors Sports Team Agreement, dated Oct. 26, 2007, by and between General Motors Corp. & Dale Earnhardt, Inc. as amended. Copy available (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>N/A</u> upon request. 3a. Debtor may have scheduled account as: <u>N/A</u> <small>(See instruction #3a on reverse side.)</small>		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: ___% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.		
Date: <u>7/12/10</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 	FOR COURT USE ONLY

Exhibit 6

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
 DEUTSCHE BANK SECURITIES INC.,

 Plaintiff,

 - against -

 DALE EARNHARDT, INC.,

 Defendant.
 ----- x

Civil Action No.:

10 CIV 5910

COMPLAINT

Plaintiff demands
Trial by Jury

Plaintiff Deutsche Bank Securities Inc. ("Deutsche Bank"), as and for its complaint herein, alleges as follows:

Nature of Action

1. This is an action for breach of contract arising from a written agreement by Defendant Dale Earnhardt, Inc. ("DEI") to sell Deutsche Bank a claim pending in the General Motors bankruptcy action. DEI signed a binding contract to sell its claim to Deutsche Bank and, after entering into that contract, DEI breached that contract by refusing to assign that claim to Deutsche Bank, thereby denying Deutsche Bank the benefit of the bargain it made with DEI. Deutsche Bank seeks money damages for lost profits resulting from DEI's breach.

Parties

2. Plaintiff Deutsche Bank is a corporation organized under the laws of the state of Delaware with its principal place of business in New York, New York.

3. Upon information and belief, Defendant DEI is a corporation organized under the laws of the state of North Carolina with its principal place of business in Mooresville, North

2009
 10-15-09
 10/15/09
 10/15/09
 10/15/09

Carolina. Upon information and belief, DEI is in the business of licensing, merchandising, and events related to the name and likeness of the late NASCAR racer Dale Earnhardt; a partner in Earnhardt Ganassi Racing, Earnhardt Childress Engines, and Earnhardt Technology Group; and engaged in philanthropic ventures through the Dale Earnhardt Foundation.

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and this dispute is between citizens of different states.

5. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events and omissions giving rise to Deutsche Bank's claim occurred in this judicial district.

Factual Allegations

6. On December 3, 2009, DEI entered into an agreement to sell to Deutsche Bank a bankruptcy claim that DEI had filed in the bankruptcy action titled *In re Motors Liquidation Co., et al., f/k/a General Motors Corp., et al.*, U.S. Bankr. S.D.N.Y., Ch. 11 No. 09-50026 (REG) (the "Bankruptcy Action"). DEI had filed its claim in the Bankruptcy Action, claim number 1649, for a value of \$3,252,706.89 (the "Claim").

7. The agreement was confirmed by a recorded telephone conversation between representatives of Deutsche Bank and DEI on December 3, 2009.

8. The agreement was further confirmed by e-mails between representatives of Deutsche Bank and DEI on December 3, 2009 and December 4, 2009, respectively. Copies of the December 3, 2009 and December 4, 2009 e-mails are attached hereto as Exhibit A.

9. The agreement was memorialized in a letter agreement confirming the transaction dated January 18, 2010 and executed by the parties (the "Confirmation"). A copy of the executed Confirmation is attached hereto as Exhibit B.

10. As set forth in the Confirmation, DEI agreed to sell Deutsche Bank 100% of the principal of the Claim, to be amended by DEI to \$3,031,180.00, and consisting of two parts: (i) \$833,333.33 representing the administrative portion of the claim, and (ii) \$2,197,846.67 representing the general unsecured portion of the Claim.

11. DEI agreed to sell the administrative portion of the Claim to Deutsche Bank at a purchase rate of seventy-one (71) percent, and to sell the general unsecured portion of the claim to Deutsche Bank at a purchase rate of sixteen (16) percent. Therefore, DEI agreed to sell the Claim to Deutsche Bank for a price of \$943,322.13.

12. The Confirmation further provided for a claim hold back amount of \$525,000.00 with respect to the administrative portion of the claim and \$175,827.72 with respect to the general unsecured portion of the claim. The hold back amounts were subject to the pending allowance of the claims.

13. The Confirmation provided that "[u]pon execution by the Buyer and Seller in the space designated below, this letter shall constitute a binding agreement between the parties." (*Id.*) The confirmation further provided that the transaction shall be closed "[a]s soon as practicable."

14. After DEI executed the Confirmation, Deutsche Bank repeatedly contacted DEI in order to discuss a mutually agreeable Assignment of Claim ("Assignment"). Over the course of several weeks, the parties discussed the terms of the Assignment and exchanged draft agreements.

15. DEI subsequently informed Deutsche Bank that it will not enter into an Assignment with Deutsche Bank because DEI had sold the Claim to a third party, The Seaport Group LLC. On July 20, 2010, a notice of transfer was filed in the Bankruptcy Action evidencing transfer of the Claim from DEI to The Seaport Group LLC. A copy of that notice of transfer is attached hereto as Exhibit C.

16. Deutsche Bank was damaged by DEI's breach, including losing the opportunity to sell the Claim to another buyer at a profit, and/or losing the ability to collect any distribution that General Motors has made or will make on the Claim.

COUNT ONE

(Breach of Contract)

17. Deutsche Bank repeats and realleges each allegation contained in paragraphs 1 through 16 as if fully set forth herein.

18. Deutsche Bank and DEI entered into a binding contract for the sale of the full value of the Claim to Deutsche Bank.

19. Deutsche Bank was at all times ready, willing, and able to perform all of its obligations under the contract.

20. DEI materially breached the terms of the contract by failing to close the transaction "as soon as practicable" and failing to deliver the Claim to Deutsche Bank, as promised in the Confirmation.

21. By reason of DEI's breach, Deutsche Bank was deprived of the benefit of its bargain under the contract.

22. By reason of DEI's breach, Deutsche Bank has been damaged in an amount to be determined at trial.

23. Therefore, DEI is liable to Deutsche Bank for breach of contract, and Deutsche Bank is entitled to an award of monetary damages.

COUNT TWO

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

24. Deutsche Bank repeats and realleges each allegation contained in paragraphs 1 through 16 as if fully set forth herein.

25. Deutsche Bank and DEI entered into a binding contract for the sale of the full value of its Claim to Deutsche Bank, to wit the Confirmation.

26. Deutsche Bank at all times acted in good faith in its performance of the Confirmation.

27. DEI acted in bad faith and unfairly to deprive Deutsche Bank of the Claim or to prevent Deutsche Bank from carrying out the closing.

28. By its conduct, DEI deprived Deutsche Bank of the benefit of its bargain under the Confirmation and/or prevented Deutsche Bank from carrying out the terms of the Confirmation.

29. DEI's conduct was contrary to the intent of the parties as expressed in the Confirmation.

30. By reason of DEI's breach, Deutsche Bank has been damaged in an amount to be determined at trial.

31. Therefore, DEI is liable to Deutsche Bank for breach of the implied covenant of good faith and fair dealing.

PRAYER FOR RELIEF

WHEREFORE, Deutsche Bank respectfully prays for the following relief:

- A. monetary damages in an amount to be determined at trial;
- B. awarding Deutsche Bank interest on any money judgment;
- C. awarding Deutsche Bank its attorneys fees, costs and disbursements as permitted by law; and
- D. awarding Deutsche Bank such other and further relief as the Court deems just and

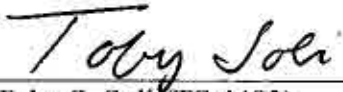
proper.

Dated: New York, New York
August 5, 2010

Respectfully submitted,

GREENBERG TRAURIG, LLP

By:


Toby S. Soli (TS 4493)
200 Park Avenue
New York, New York 10166
(Tel.): (212) 801-9200
(Fax): (212) 801-6400

Attorneys for Plaintiff



Chad Warpula
<cwarpula@DEI-Zone.com>
12/04/2009 12:07 PM

To Sally Goudie/db/dbcom@DBAmericas
cc Eamonn-G Obrien/db/dbcom@DBAmericas, Matthew
Weinstein/db/dbcom@DBAmericas
bcc

Subject RE: Trade Confirmation / DB buys from DEI

History: This message has been forwarded.

Confirmed in principle, subject to execution and delivery of final Assignment of Claim Agreement between the parties. Thanks.

Chad Warpula,
Executive Vice President & General Counsel

Dale Earnhardt, Inc.
1675 Dale Earnhardt Highway #3.
 Mooresville, NC 28115
Office: (704) 662-8926
Fax: (704) 663-8975
www.daleearnhardtinc.com

Earnhardt Ganassi Racing with Felix Sabates, LLC
8500 Westmoreland Drive
Concord, NC 28027
Office: (704) 235-1160
Cell: (704) 651-3412
Fax: (704) 663-0848
www.earnhardtganassi.com

Notice of Confidential Communication

This email may contain confidential or legally protected information that is intended strictly for the use of the individual or entity named in this message. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or reliance upon the information contained in this email is strictly prohibited. If you have received this email in error, please contact the sender immediately.

From: Sally Goudie [mailto:sally.goudie@db.com]
Sent: Thursday, December 03, 2009 6:20 PM
To: Chad Warpula
Cc: Eamonn-G Obrien; Matthew Weinstein
Subject: Trade Confirmation / DB buys from DEI

Chad

As confirmed by telephone, Deutsche Bank buys from Dale Earnhardt, Inc the Motors Liquidation Company f/k/a General Motors Corp claim as detailed below:

Buyer:	Deutsche Bank
Seller:	Dale Earnhardt Inc
Debtor:	Motors Liquidation Company f/k/a General Motors Corp
Type of Instrument:	Claims of Dale Earnhardt Inc in the Motors Liquidation Company case
Administrative Claim Amount:	\$833,333.33
General Unsecured Claim Amount:	\$2,197,846.67
Administrative Claim Purchase Price :	71.00%

Unsecured Claim Purchase Price : 16.00 %

Subject to:

- Regarding the General Unsecured Claim Amount Buyer agrees to fund Seller 8.00% of the Unsecured Claim Purchase Price on closing, the remaining 8.00% shall be released to Seller on allowance of the claim by final order.
- Regarding the Administrative Claim Amount Buyer agrees to fund Seller 8.00% of the Unsecured Claim Purchase Price on closing, the remaining 63.00% shall be released to Seller on allowance by a final order in the bankruptcy case and on clarification by the Debtor that the claim will be treated as an Administrative claim in the case.
- Execution of an Assignment of Claim Agreement that shall contain market standard representations, warranties and disallowance language.
- Understanding by Buyer and Seller that an amended Proof of Claim might need to be filed.

Please reconfirm the above by return email and we will have the 2 page trade confirmation sent out.

Thanks for the trade and have a nice evening.

Sally

Sally Goudie
Vice President
Deutsche Bank Securities Inc
60 Wall Street, 3rd Floor
New York, NY10005
Tel: + 1 212 250 2577
Fax: + 1 212 797 8770
Mob: + 1 917 497 0740 / 1 646 467 4705

This communication may contain confidential and/or privileged information. If you are not the intended recipient (or have received this communication in error) please notify the sender immediately and destroy this communication. Any unauthorized copying, disclosure or distribution of the material in this communication is strictly forbidden.

Deutsche Bank does not render legal or tax advice, and the information contained in this communication should not be regarded as such.

Deutsche Bank



Deutsche Bank Securities Inc.
Distressed Products Group
60 Wall Street, 3rd Floor
New York, New York 10005
Attention: Matt Weinstein
Telephone: 212-250-5760
Facsimile: 212-797-8770

DEI
January 18, 2010
~~December 3, 2009~~

DALE EARNHARDT INC.

1675 Dale Earnhardt Hwy
Mooresville, NC 28115-8330
Attn: Chad Warpula, General Manager

Dear Sirs,

This letter shall confirm the following transaction between Deutsche Bank Securities Inc. and Dale Earnhardt, Inc., subject to the terms and provisions of a mutually agreeable Assignment of Claim (collectively, the "Assignment"). In the event of any inconsistency between the terms and provisions contained in the Assignment and this letter, the Assignment shall prevail. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Assignment:

Trade Date: December 3, 2009
Seller: Dale Earnhardt, Inc.
Buyer: Deutsche Bank Securities Inc.
Debtor: Motors Liquidation Company (f/k/a General Motors Corporation)

Type of Instrument: All of Seller's right, title and interest in and to the claim filed by Seller against the Debtor, one of the debtors-in-possession in the Chapter 11 reorganization case (the "Case") entitled Motors Liquidation Company, et al. f/k/a General Motors Corp., et al., Chapter 11 Case No. 09-50026 (REG) (Jointly Administered) in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") assigned claim number 1649 in the Case (the "Claim")

Proof of Claim Amount: \$3,252,706.89, to be amended by Seller to \$3,031,180.00, which represents 100% of the principal amount of the Claim consisting of:

\$833,333.33 representing the administrative portion of the Claim (the "Administrative Claim Amount")

\$2,197,846.67 representing the general unsecured portion of the Claim (the "General Unsecured Claim Amount")

Purchase Rate: 71.00% of the Administrative Claim Amount

16.00% of the General Unsecured Claim Amount

Form of Transfer: Assignment of Claim

Claim Hold-Back Amount:

\$525,000.00 with respect to the Administrative Claim Amount

\$175,827.73 with respect to the General Unsecured Amount

DEL
Initial Payment: On the date of joint execution of the Assignment, Buyer shall pay Seller:

(1) 8% of the Administrative Claim Amount,

(2) 8% of the General Unsecured Claim Amount.

Payments: Any and all payments or distributions made on account of the Claim, whether made before, on or after the Trade Date shall be for the benefit of Buyer.

Settlement: As soon as practicable.

Binding Effect: Upon execution by Buyer and Seller in the space designated below, this letter shall constitute a binding agreement between the parties.

Confidentiality: The details of this transaction shall remain strictly confidential.

Subject to:

Seller gaining Buyer's internal compliance department approval for set up as a new account. Seller shall provide all relevant documentation required by Buyer in order to complete such internal set up.

DEL
In the event that some or all of the Claim ~~Hold-Back Amount~~ is allowed pursuant to a Final Order in the Case as an allowed claim, Buyer shall pay to Seller an amount equal to the portion of the Claim ~~Hold-Back Amount~~ that has been allowed by Final Order as an allowed claim multiplied by the respective Purchase Rate, less the Initial Payment

DEL
In the event of an Impairment, Seller agrees to immediately repay, on the demand of Buyer (which demand shall be made at Buyer's sole option), as the case may be, an amount equal to the amount of the Claim subject to Impairment multiplied by the respective Purchase Rate, plus interest thereon.

If the Claims are allowed by a Final Order in the Case in an amount greater than the Proof of Claim Amount, Buyer shall have the right, but not the obligation, to purchase the amounts so allowed in excess of the Proof of Claim Amount multiplied by respective Purchase Rate.

Seller filing an amended proof of claim in the Case in the amount of \$3,031,180.00, which represents 100% of the principal amount of the Claim.

Seller making true and accurate representations, warranties and covenants as set forth in the Assignment.

signature block on the following page

Please evidence your agreement to the foregoing by signing a copy of this letter in the space set forth below and faxing the completed document to **Matt Weinstein** at the following email address **matthew.weinstein@db.com**

Sincerely,

DEUTSCHE BANK SECURITIES INC.


By: Scott G. Martin
Title: **Managing Director**


By: Charles J. Lanktree
Title: **Director**

ACCEPTED AND AGREED
SUBJECT TO INITIALED CHANGES:

DALE EARNHARDT, INC.


By: CHAD WARBUKA
Title: **EVP + GENERAL COUNSEL**

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

In Re: MOTORS LIQUIDATION COMPANY
Case No: 09-50026 (Jointly Administered)

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

CLAIM NUMBER 46880 (Amends 1649) HAS BEEN FILED IN THIS CASE or deemed filed under 11 U.S.C. 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bank. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

Name of Transferee:

The Seaport Group LLC

Name and address where notices to transferee should be sent:

The Seaport Group, LLC
360 Madison Avenue, 22nd Floor
New York, NY 10017
Attention: General Counsel

Phone: 212-616-7700

Last Four Digits of Acct #: N/A

Name and Address where transferee payments Should be sent (if different from above):

Phone: N/A

Last Four Digits of Acct. #: N/A

Name of Transferor:

Dale Earnhardt, Inc.

Court Claim # (if known): **46880 (Amends 1649)**
Amended Proof of Claim Amt: **\$3,031,180.00**
Original Proof of Claim Amt: **\$3,252,706.80**
Date Claim Filed: **09/29/09**
Date Claim Amended: **07/14/10**

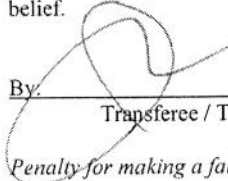
Name and Address of Transferor:

Dale Earnhardt, Inc.
1675 Dale Earnhardt Highway #3
Mooresville, NC 28115

Phone: 704-662-8000

Last Four Digits of Acct. #: N/A

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By:  Jonathan Silverman
General Counsel 7/20/10
Transferee / Transferee's Agent

Date: 7/20/10

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18U.S.C. 152 & 3571

--DEADLINE TO OBJECT TO TRANSFER--

The transferor of claim named above is advised that this Notice of Transfer of Claim Other Than for Security has been filed in the clerk's office of this court as evidence of the transfer. Objections must be filed with the court within twenty (20) days of the mailing of this notice. If no objection is timely received by the court, the transferee will be substituted as the original claimant without further order of the court.

Date: _____

CLERK OF THE COURT

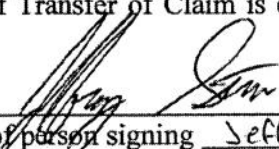
EVIDENCE OF TRANSFER OF CLAIM

TO: THE DEBTOR AND THE BANKRUPTCY COURT


For value received, the adequacy and sufficiency of which are hereby acknowledged, Dale Earnhardt, Inc. ("Assignor") hereby unconditionally and irrevocably sells, transfers and assigns to The Seaport Group LLC ("Assignee") all of its right, title, interest, claims and causes of action in and to, or arising under or in connection with, claims in the aggregate amount of \$3,031,180.00 (the "Assigned Claim"), against Motors Liquidation Company (f/k/a General Motors Corporation) ("Debtor"), the debtor-in-possession in Case No. 09-50026 (the "Case") under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 et. seq.) (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and any and all proofs of claim filed by Assignor with the Bankruptcy Court in respect of the foregoing claim.

Assignor hereby waives any objection to the transfer of the Assigned Claim to Assignee on the books and records of the Debtor and the Bankruptcy Court, and hereby waives to the fullest extent permitted by law any notice or right to a hearing as may be imposed by Rule 3001 of the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, applicable local bankruptcy rules or applicable law. Assignor acknowledges and understands, and hereby stipulates, that an order of the Bankruptcy Court may be entered without further notice to Assignor transferring to Assignee the foregoing claim and recognizing the Assignee as the sole owner and holder of the Assigned Claim. Assignor further directs the Debtor, the Bankruptcy Court and all other interested parties that all further notices relating to the Assigned Claim, and all payments or distributions of money or property in respect of claim, shall be delivered or made to the Assignee.

IN WITNESS WHEREOF, this Evidence of Transfer of Claim is executed on July 16, 2010.

By:  Dale Earnhardt, Inc.
Name of person signing Jeffrey Steiner
Title of person signing EVP & GM

THE SEAPORT GROUP LLC

By: 
Jonathan Silverman
General Counsel

7/20/10

COPY



UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PROOF OF CLAIM

Name of Debtor (Check Only One): Case No.
 Motors Liquidation Company (f/k/a General Motors Corporation) 09-50026 (REG)
 MLCS, LLC (f/k/a Saturn, LLC) 09-50027 (REG)
 MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation) 09-50028 (REG)
 MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.) 09-13558 (REG)

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, but may be used for purposes of asserting a claim under 11 U.S.C. § 503(b)(9) (see Item # 5). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): **Dale Earnhardt, Inc.**

Name and address where notices should be sent:
Dale Earnhardt, Inc.
Jeff Steiner, EVP & GM
1675 Dale Earnhardt Highway
Mooresville, NC 28115-8330

Telephone number: **704-662-8000**
 Email Address:

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: **1649**
(if known)

Filed on: **09/29/2009**



If an amount is identified above, you have a claim scheduled by one of the Debtors as shown (This scheduled amount of your claim may be an amendment to a previously scheduled amount.) If you agree with the amount and priority of your claim as scheduled by the Debtor and you have no other claim against the Debtor, you do not need to file this proof of claim form. **EXCEPT AS FOLLOWS:** If the amount shown is listed as DISPUTED, UNLIQUIDATED, or CONTINGENT, a proof of claim MUST be filed in order to receive any distribution in respect of your claim. If you have already filed a proof of claim in accordance with the attached instructions, you need not file again.

Name and address where payment should be sent (if different from above):
N/A

Telephone number:

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed, June 1, 2009: **§ 3,031,180.00**

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If all or part of your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: **Motorsports Team Agreement, dated Oct. 26, 2007, by and between General Motors Corp. & Dale Earnhardt, Inc. as amended. Copy available**
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: **N/A** upon request.

3a. Debtor may have scheduled account as: **N/A**
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
 Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Equipment Other
 Describe:

Value of Property: \$ _____ Annual Interest Rate: % _____

Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____

Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain in an attachment.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(4).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Value of goods received by the Debtor within 20 days before the date of commencement of the case. 11 U.S.C. § 503(b)(9) (§ 507(a)(2)).

Other. Specify applicable paragraph of 11 U.S.C. § 507(a)(2):
 Amount entitled to priority:
§ 833,333.33

* Amounts are subject to adjustment on 1/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date: **7/12/10**

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Jeff Steiner

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 and 3571.
 Modified B10 (GCG) (12/08)

Exhibit 7

August 6, 2010

**Delivered Via
Email KPeluso@manatt.com,
Direct Fax (212) 536-1817
and Federal Express Overnight Courier, return receipt requested**

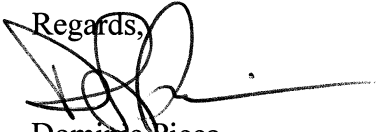
Attn: Kimo S. Peluso
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036
As counsel for and for service on The Seaport Group LLC

Dear Kimo:

Reference is made to that certain Assignment of Claim and Settlement Agreement entered into between Dale Earnhardt, Inc. ("Assignor") and The Seaport Group LLC ("Assignee") dated as of July 16, 2010 (the "Assignment Agreement"). All capitalized terms used and not defined herein have the meanings given them in the Assignment Agreement.

On August 5, 2010, Deutsche Bank Securities Inc. ("DBS") filed a lawsuit against DEI captioned *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc., 10 CIV 5910*, in the United States District Court for the Southern District of New York (the "Lawsuit"), alleging breach of contract by DEI related to the Assigned Claim. The Lawsuit was filed within the 20 Day Period defined in Section 4 of the Assignment Agreement, which commenced on July 21, 2010 and expires on August 9, 2010. Pursuant to Section 4 of the Assignment Agreement, Assignor has until 2 calendar days after such 20 Day Period, on or before Wednesday, August 11, 2010, to elect in written notice to Assignee to terminate and declare the Assignment Agreement null and void (the "Assignor Termination Election").

Assignor hereby reserves all rights related to the Assignor Termination Election, and pursuant to Section 9(a) and Section 12 of the Assignment Agreement, Assignor hereby asserts its right to contest the Disallowance Action resulting from the Lawsuit.

Regards,

Dominic Picca

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

Exhibit 8

August 10, 2010

Client-Matter: 52044-070

VIA EMAIL AND FEDEX

Dominic Picca
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue
New York, NY 10017

**Re: *The Seaport Group LLC v. Dale Earnhardt, Inc.*, U.S. Dist. Ct. S.D.N.Y.,
No. 10-cv-01599 (DAB)**

Dear Dominic:

We write in response to your August 6, 2010 letter regarding the Assignment of Claim and Settlement Agreement (the "Assignment Agreement") entered into between Dale Earnhardt, Inc. ("DEI" or "Assignor") and The Seaport Group LLC ("Seaport" or "Assignee"). Your letter purports to preserve DEI's alleged right to terminate the Assignment Agreement pursuant to Section 4 thereof based on the August 5, 2010 lawsuit filed by Deutsche Bank Securities Inc. ("Deutsche Bank") against DEI.

The following language from Section 4 of the Assignment Agreement provides certain termination rights if Deutsche Bank objects to the transfer of the bankruptcy claim from DEI to Seaport within twenty days after the Notice of Transfer (as such term is defined in the Assignment Agreement) is filed:

If during the 20 Day Period, Deutsche Bank, AG or any of its affiliates, assignees or designees (collectively, "Deutsche Bank") files or serves a notice with the Bankruptcy Court objecting to the transfer, then Assignee may elect in a written notice to Assignor within two (2) calendar days after such 20 Day Period to not pay the Purchase Price to Assignor and to terminate and declare this Assignment and Settlement Agreement null and void. *Further, in the event during the 20 Day Period Deutsche Bank does file or serve a claim against Assignor **objecting to the transfer**, then Assignor may elect in a written notice to Assignee within two (2) calendar days after such 20 Day Period to terminate and declare this Assignment and Settlement Agreement null and void, in which event Assignee shall be relieved of its obligation to pay the Purchase Price to Assignor hereunder.*

Assignment Agreement, § 4 (emphasis added).

Dominic Picca
August 10, 2010
Page 2

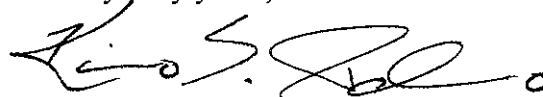
The Notice of Transfer was filed with the Bankruptcy Court on July 20, 2010. The 20-Day Period therefore expired yesterday, August 9, 2010. During that period, Deutsche Bank did not file any objection with the Bankruptcy Court or otherwise serve Seaport (or, as far as you have disclosed, DEI) with any objection to the transfer. We have seen no indication of any intent, much less a formal claim, from Deutsche Bank to object to, to seek to prevent, or to otherwise interfere in any manner with the transfer of claim. Thus, the 20-Day Period has expired and the Assignment Agreement is final and binding.

Contrary to your August 6, 2010 letter, Deutsche Bank's lawsuit against DEI does not conceivably trigger DEI's termination rights. Deutsche Bank's action for money damages is not a suit "objecting to the transfer" of the claim from DEI to Seaport, as expressly required for DEI's termination rights under Section 4. Deutsche Bank's suit does not object to or seek to enjoin or invalidate the assignment of the bankruptcy claim from DEI to Seaport or the resulting transfer of claim by the bankruptcy court. On the contrary, Deutsche Bank's lawsuit seeks only money damages for DEI's alleged breach of DEI's alleged promise to assign the bankruptcy claim to Deutsche Bank in January 2010. The parties never agreed, and Seaport never would have agreed, that a suit merely for money damages would somehow relieve DEI of its obligations under the Assignment Agreement. The 20-Day Period has expired and DEI does not have any termination rights against our client.

More importantly, DEI committed to assign the bankruptcy claim to Seaport no later than November 2009. Allegations that DEI also made similar promises to Deutsche Bank in January 2010 do not relieve DEI of its obligations to Seaport. This is not the first time that DEI has tried to back out of its commitment to Seaport. After reaching agreement with Seaport, DEI apparently negotiated with Deutsche Bank. Then, in an attempt to justify its breach, DEI told Seaport that it was renegotiating with General Motors, an assertion that was apparently false. DEI will merely increase, not reduce, its potential liability and legal expenses if it breaches the Assignment Agreement now.

Accordingly, we ask that you withdraw the position set forth in your August 6, 2010 letter and reaffirm your client's intent to comply with the remaining terms of the Assignment Agreement. The above is not a complete recitation of Seaport's position on this matter and should not be construed as a waiver or admission of any kind. All rights are expressly reserved.

Very truly yours,



Kimo S. Peluso

cc: Frank Earley
Ronald G. Blum

Exhibit 9

Peluso, Kimo

From: Peluso, Kimo
Sent: Wednesday, August 11, 2010 11:49 AM
To: Dominic Picca (DJPicca@mintz.com)
Cc: Blum, Ronald G.; Francis J. Earley (FEarley@mintz.com)
Subject: The Seaport Group LLC v. Dale Earnhardt, Inc., U.S. Dist. Ct. S.D.N.Y., No. 10-cv-01599 (DAB)

Dominic,

I write to document our conversation regarding the Assignment of Claim and Settlement Agreement (the "Assignment Agreement") entered into between Dale Earnhardt, Inc. ("DEI" or "Assignor") and The Seaport Group LLC ("Seaport" or "Assignee").

Seaport and DEI have agreed to extend by one week, until August 18, 2010, the parties' deadline to exercise by written notice any rights they may have to terminate the Assignment Agreement pursuant to Section 4 thereof, subject to the following. Any currently fixed deadlines in the Assignment Agreement subsequent hereto are likewise extended by one week, including the Payment Date and the deadline to execute and file a stipulation to dismiss the Action. Additionally, this agreement is without prejudice to, and shall not be cited or construed against, Seaport's position that there was no event during the 20 Day Period that triggered DEI's termination rights. To be clear, this extension does not enlarge the 20 Day Period described in Section 4, which has already expired.

- Kimo

Kimo S. Peluso
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036
Main: (212)790-4500
Direct: (212) 790-4570
Direct Fax: (212)536-1817

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply e-mail at kpeluso@manatt.com or by telephone at (212) 790-4500, and destroy the original transmission and its attachments without reading them or saving them to disk. Thank you.

8/24/2010

Exhibit 10

MINTZ LEVIN

Dominic J. Picca | 212 692 6859 | djpicca@mintz.com

Chrysler Center
666 Third Avenue
New York, NY 10017
212-935-3000
212-983-3115 fax
www.mintz.com

August 18, 2010

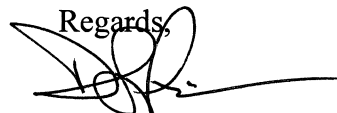
Delivered Via
Email KPeluso@manatt.com,
Direct Fax (212) 536-1817
and Federal Express Overnight Courier, return receipt requested

Attn: Kimo S. Peluso
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036
As counsel for and for service on The Seaport Group LLC

Dear Kimo:

Reference is made to that certain Assignment of Claim and Settlement Agreement entered into between Dale Earnhardt, Inc. (“Assignor”) and The Seaport Group LLC (“Assignee”) dated as of July 16, 2010 (the “Assignment Agreement”). All capitalized terms used and not defined herein have the meanings given them in the Assignment Agreement. Reference also is made to my August 6, 2010, letter to you concerning Assignor’s reservation of rights, including to terminate the Assignment Agreement pursuant to Section 4 thereof (the “Assignor Termination Election”), due to the lawsuit Deutsche Bank Securities Inc. filed against DEI captioned *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc., 10 CIV 5910* (the “Lawsuit”), which Lawsuit was filed within the 20 Day Period. Finally, reference is made to the agreement we reached, as confirmed by your email to me, dated August 11, 2010, extending by one week and until August 18, 2010, Assignor’s right to terminate the Assignment Agreement, without prejudice to Assignee’s right to contest the termination.

Please be advised that, pursuant to Section 4 of the Assignment Agreement, and as a result of the Lawsuit, Assignor hereby exercises the Assignor Termination Election to terminate the Assignment Agreement. Assignor hereby declares the Assignment Agreement null and void. Assignor further reserves all of its rights and remedies under all applicable provisions of the Assignment Agreement, at law and in equity.

Regards,

Dominic Picca

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Exhibit 11

MINTZ LEVIN

Robert I. Bodian | 212 692 6726 | rbodian@mintz.com

Chrysler Center
666 Third Avenue
New York, NY 10017
212-935-3000
212-983-3115 fax
www.mintz.com

fax transmittal

FROM:

Name Dominic J. Picca, Esq.

Date August 17, 2010

of Pages 4

TO:

Name	Company	Business#	Fax #
Hon. Paul G. Gardephe	United States District Court, S.D.N.Y.		212-805-7986
Kimo S. Peluso, Esq.			212-790-4545
Toby S. Soli, Esq.			212-801-6400

Comments:

Please call us at 212-935-3000 if you experience any problems.

STATEMENT OF CONFIDENTIALITY

The information contained in this fax is intended for the exclusive use of the addressee and may contain confidential or privileged information. If you are not the intended recipient, you are hereby notified that any form or dissemination of this communication is strictly prohibited. If this fax was sent in error, please immediately notify us by phone.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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MINTZ LEVIN

Dominic J. Picca | 212 692 6859 | dpicca@mintz.com

Chrysler Center
666 Third Avenue
New York, NY 10017
212-935-3000
212-983-3115 fax
www.mintz.com

August 17, 2010

BY HAND

Honorable Deborah A. Batts
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 2510
New York, NY 10007

BY FACSIMILE

Honorable Paul G. Gardephe
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 920
New York, NY 10007
Fax: 212-805-7986

Re: *The Seaport Group LLC v. Dale Earnhardt, Inc.*, case no. 10-cv-1599 (DAB)
Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc., case no. 10-cv-5910
(PGG)

Dear Judges Batts & Gardephe:

This office represents the defendant Dale Earnhardt, Inc. ("DEI") in both of the above-referenced actions. In accordance with Judge Batts' Individual Practice Rule II(B)(1) and Judge Gardephe's Individual Practice Rule 3(A), I write to request a pre-motion conference to seek permission to file a pre-discovery motion for the consolidation, in accordance with Federal Rule of Civil Procedure 42(a), of *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc.* (case no. 10-cv-5910), over which Judge Gardephe presides, with the earlier-filed related case over which Judge Batts presides, *The Seaport Group LLC v. Dale Earnhardt, Inc.* (case no. 10-cv-1599). This motion is not on consent.

Presently pending before the Court are two related actions -- one brought by The Seaport Group LLC ("Seaport") and the other by Deutsche Bank Securities Inc. ("Deutsche Bank") (together with Seaport, "the Plaintiffs") -- in which the Plaintiffs allege that DEI separately agreed to sell each Plaintiff DEI's pending claim in the General Motors bankruptcy case, but later failed to do so. DEI seeks to move, in accordance with to Rule 42(a), for consolidation of the actions. It is appropriate to consolidate both actions because they allege the same facts of wrongdoing against the same defendant regarding the same trade claim and assert similar contractual claims seeking similar relief.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Honorable Deborah A. Batts
Honorable Paul G. Gardephe
August 17, 2010
Page 2

Generally, Seaport's complaint alleges that "[a]fter DEI signed a binding contract to sell its claim [pending in the General Motors bankruptcy action] to Seaport, the value of the claim increased dramatically, and DEI refused to honor the deal."¹ Seaport seeks a declaration that its alleged contract with DEI is binding as well as specific performance or money damages due to DEI's alleged breaches of contract and of the implied covenant of good faith and fair dealing.² Like Seaport, Deutsche Bank also alleges that "DEI signed a binding contract to sell its claim to Deutsche Bank and, after entering into that contract, DEI breached that contract by refusing to assign that claim to Deutsche Bank."³ Also like Seaport, Deutsche Bank seeks money damages due to DEI's alleged breaches of contract and of the implied covenant of good faith and fair dealing.⁴

Rule 42 consolidation is appropriate when the actions involve common questions of law or fact.⁵ "In general, courts have broad discretion to determine whether consolidation is appropriate and . . . have taken the view that considerations of judicial economy favor consolidation. . . . The chief advantage of consolidation is that it avoids the waste associated with duplicative discovery and multiple trials and the danger of inconsistent verdicts. . . . In deciding whether consolidation is proper, the court must balance the interest of judicial convenience against any delay, confusion, or prejudice that might result from such consolidation."⁶

Consolidation of the Plaintiffs' related actions is judicially economical because they both involve breaches of alleged agreements with the same defendant, DEI, to purchase the very same claim. Moreover, these actions, if left separate, are bound to duplicate discovery and will ultimately require multiple trials to resolve the same or similar underlying factual and legal issues. Accordingly, DEI requests a pre-motion conference seeking permission to file a pre-discovery motion for consolidation of these actions.

Additionally, the initial pre-trial conference with Judge Batts in the *Seaport* action is set for August 27, 2010. DEI requests an adjournment of that conference to ensure that, in the event that the Courts grant consolidation, all parties who will need to be present for the scheduling conference are able to attend.

¹ See Complaint, *The Seaport Group LLC v. Dale Earnhardt, Inc.*, case no. 10-cv-1599 (DAB) ("the Seaport Complaint"), ¶ 1.

² Seaport Complaint, ¶¶ 1, 30-59.

³ See Complaint, *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc.*, case no. 10-cv-5910 (PGG) ("the Deutsche Bank Complaint"), ¶ 1.

⁴ Deutsche Bank Complaint, ¶¶ 1, 17-31.

⁵ Fed. R. Civ. P. 42(a).

⁶ *Internet Law Library, Inc. v. Southridge Capital Management, LLC*, 208 F.R.D. 59, 61 (S.D.N.Y. 2002) (citing *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir.1990)) (citations, punctuation omitted) (Carter, J.).

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Honorable Deborah A. Batts
Honorable Paul G. Gardephe
August 17, 2010
Page 3

Respectfully submitted,

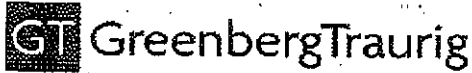


Dominic J. Picca (Bar No. 2376)

cc: Kimo S. Peluso, Esq. (by fax)
Toby S. Soli, Esq. (by fax)

5000674v.1

Exhibit 12



Transmittal Cover Sheet

From: Toby S. Soli, Esq.	Tel: 212.801.3196	E-Mail: solit@gtlaw.com
To: Esq. Kimo S. Peluso	Fax No: 12127904545	Company:
		Phone No.:

File No.: 093544.049900

Re: Deutsch Bank Securities Inc. v. Dale Earnhardt, Inc., No. 10-cv-5910 (PGG)

Date: 8/19/10 4:36 PM

No. Pages: Including Cover Sheet 3.

If you do not receive all pages properly, please call the sender.

Notes:

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Greenberg Traurig, LLP
MetLife Building, 200 Park Avenue, New York, New York 10166 Phone: 212.801.9200 Fax: 212.801.6400



Toby Soll
(212) 801-3196
sollt@gtlaw.com

August 19, 2010

BY FACSIMILE

Honorable Paul G. Gardephe
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 920
New York, NY 10007
Fax: 212-805-7986

BY HAND

Honorable Deborah A. Batts
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 2510
New York, NY 10007

Re: Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc., No. 10-cv-5910 (PGG)
The Seaport Group LLC v. Dale Earnhardt, Inc., No. 10-cv-1599 (DAB)

Dear Judges Gardephe & Batts:

This office represents Plaintiff Deutsche Bank Securities Inc. ("Deutsche Bank") in the above-captioned matter before Judge Gardephe. I am writing in opposition to the request of defendant Dale Earnhardt, Inc. ("DEI"), dated August 17, 2010, for permission to file a pre-discovery motion for consolidation of the above-entitled actions pursuant to Federal Rule of Civil Procedure 42(a).

Contrary to DEI's contentions, the two actions are not related, do not involve the "same facts" and consolidation would not be judicially economical. The two actions entail substantially different questions of law and fact. While the parties may have disputes over the same asset - DEI's claim in the General Motors bankruptcy proceeding - their negotiations and transactions were entirely separate, therefore leading to completely unique questions of whether and when two separate purported contracts were created. As such, there is no overlap between the actions' factual and legal issues, and a consolidated action would merely involve two distinct sets of analysis under the same caption.

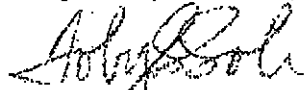
Moreover, a consolidated action would actually be detrimental to the parties and a waste of judicial resources. Deutsche Bank would need to commit substantial resources to monitoring a dispute entirely unrelated to its own, and substantial confusion and prejudice could ensue by trying the cases together, as a jury may improperly assume, for example, that whether one party had a binding contract with DEI is contingent upon whether the other plaintiff did, which is clearly not the case. See, e.g., Aerotel Ltd. v. Verizon Comm'n's, Inc., 234 F.R.D. 64, 66 (S.D.N.Y. 2005) (holding that even where the same patent was at issue, contract claim and infringement claim should not be consolidated where parties lacked interest in the other claims, and non-overlapping issues would be confusing to the jury and

- CHIEF
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- ASSISTANT
- SECRETARY
- RECEPTION
- TRAINING
- DEVELOPMENT
- OPERATIONS
- LEGAL
- FINANCE
- IT
- COMMUNICATIONS
- RESEARCH
- ANALYSIS
- COMPLIANCE
- ENVIRONMENTAL
- SALES
- MARKETING
- NEW YORK
- ORANGE COUNTY
- ORLANDO
- PALM BEACH COUNTY
- PHOENIX
- PORTLAND
- RENO
- SEATTLE
- ST. LOUIS
- TAMPA
- TEXAS
- WASHINGTON
- WASHINGTON DC
- WEST HAVEN
- WISCONSIN

would impede judicial economy "as each defendant would have to attend to significant discovery primarily to the other"); Flintknote Co. v. Allis-Chalmers Corp., 73 F.R.D. 463, 465 (S.D.N.Y. 1977) (despite similar theories of recovery involved in breach of contract actions arising out of two separate contracts, motion to consolidate denied where the contracts were different and evidence for each claim would be irrelevant to the other and confuse the jury).

Accordingly, Deutsche Bank requests that DEI's request for permission to file a pre-discovery motion for consolidation of these actions be denied.

Respectfully submitted,



Toby S. Soli (TS 4493)

cc: Dominic J. Ficca, Esq. (by fax)
Kimo S. Peluso, Esq. (by fax)

Exhibit 13

August 20, 2010

Client-Matter: 52044-070

BY HAND

Honorable Deborah A. Batts
United States District Court for the Southern
District of New York
Daniel Patrick Moynihan United States
Courthouse
500 Pearl Street, Room 2510
New York, NY 10007

BY FACSIMILE – (212) 805-7986

Honorable Paul G. Gardephe
United States District Court for the Southern
District of New York
Daniel Patrick Moynihan United States
Courthouse
500 Pearl Street, Room 920
New York, NY 10007

**Re: *The Seaport Group LLC v. Dale Earnhardt, Inc.*, No. 10-cv-01599 (DAB); and
Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc., No. 10-cv-5910 (PGG).**

Dear Judges Batts and Gardephe:

We represent Plaintiff The Seaport Group LLC (“Seaport”) in the above-captioned matter before Judge Batts, and write in opposition to the August 17, 2010 request by Defendant Dale Earnhardt, Inc. (“DEI”) that these two actions be consolidated.

We join in the August 19, 2010 opposition submitted by Deutsche Bank Securities, Inc. (“Deutsche Bank”) because consolidation will slow both actions. Seaport’s action, unlike Deutsche Bank’s, seeks specific performance. It involves factual discovery and documentary evidence that has nothing to do with Deutsche Bank’s claims against DEI. Deutsche Bank’s action concerns separate transactions, communications, documents and agreements. It seeks only money damages and was filed more than five months after Seaport’s complaint.

Accordingly, we respectfully request that the Court not consolidate the two actions and that the conference before Judge Batts on August 27, 2010 in Seaport’s action take place as scheduled.

Respectfully Submitted,



Ronald G. Blum

cc: Dominic Picca, Esq. (by email)
Toby S. Soli, Esq. (by email)

Exhibit 14

Peluso, Kimo

From: NYSJ_ECF_Pool@nysd.uscourts.gov
Sent: Tuesday, August 31, 2010 10:47 AM
To: deadmail@nysd.uscourts.gov
Subject: Activity in Case 1:10-cv-01599-DAB The Seaport Group LLC v. Dale Earnhardt, Inc. Scheduling Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

United States District Court for the Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 8/31/2010 at 10:46 AM EDT and filed on 8/27/2010

Case Name: The Seaport Group LLC v. Dale Earnhardt, Inc.

Case Number: [1:10-cv-01599-DAB](#)

Filer:

Document Number: [10](#)

Docket Text:

SCHEDULING ORDER: Trial estimated time is 3-4 days with jury. ENDORSEMENT: No consolidation w/ 10 Civ 5910; the Court will not take assignment of that case either. This case put on suspense for 90 days to await determination by Judge Gerber on July 2010 settlement and Assignment objection which could resolve this case. Parties to report to Court in 90 days on status. So Ordered (Signed by Judge Deborah A. Batts on 8/27/2010) (js)

1:10-cv-01599-DAB Notice has been electronically mailed to:

Ronald Gustav Blum rblum@manatt.com, astaltari@manatt.com

Kimo S. Peluso kpeluso@manatt.com, astaltari@manatt.com

Dominic Joseph Picca dpicca@mintz.com, Docketing@mintz.com, cmsmith@mintz.com

Francis John Earley fearley@mintz.com, Docketing@mintz.com

1:10-cv-01599-DAB Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=8/31/2010] [FileNumber=7645809-0] [67531d8eb5ccb1a41f381541b539532574418683f6bfa9dbe28b85a06a75d53894e9b573fd0cb444efd9b349c25a8eda68121321f2d5be34a701ffce75dd3ac]]

9/1/2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE SEAPORT GROUP LLC,

Plaintiff,

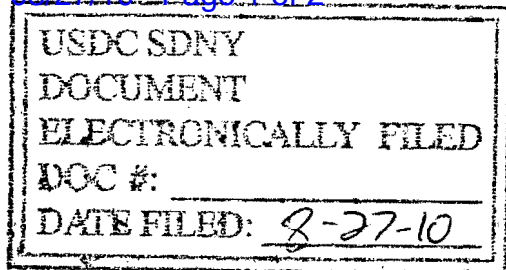
-against-

DALE EARNHARDT, INC.

Defendant.

-----X

DEBORAH A. BATTS, United States District Judge.



10 Civ. 01599 (DAB)
SCHEDULING ORDER

Brynn Lyerly, Law Clerk

(1) Email:

brynn_lyerly@nysd.uscourts.gov

(2) Phone: (212) 805-4617

I. TO BE COMPLETED BY THE PARTIES

Trial: Estimated trial time is 3-4 days.

Jury . Non-Jury . (Please Check.)

II. TO BE COMPLETED BY THE COURT

Pursuant to Fed. R. Civ. P. 16, after holding a pre-trial conference,

IT IS HEREBY ORDERED that:

Pleadings and Parties: Except for good cause shown --

1. No additional parties may be joined after _____.
2. No additional causes of action or defenses may be asserted after _____.

Discovery: Except for good cause explicitly set forth by letter and shown, all discovery, including expert discovery, shall be commenced in time to be completed by _____. The court expects discovery to be completed within 60 days of the first scheduling conference unless, after the expiration of that 60 day period, all counsel stipulate that an additional period of time (**not to exceed 60 more days**) is needed to complete discovery, and the Court approves such extension.

Dispositive Motions: A party contemplating making a dispositive motion must notify opposing counsel and the Court by _____. Except for extraordinary cause shown and subsequent permission of the Court given, no party may make a motion for summary judgment until after the completion of discovery.

Within 10 days of serving its intent to file for summary judgment, the moving party must serve on the opposing side and submit to Chambers a letter no more than two pages in length setting forth the proposed basis for summary judgment. Within 10 days of the receipt of this letter, the opposing side must respond by letter to the moving party's request. These letters shall form the basis of discussion at the pre-motion conference held with the Court. However, if the Court finds that a conference is not necessary, the Court will issue a motion schedule.



ASSUMING NO DISPOSITIVE MOTIONS ARE MADE:

Proposed Requests to Charge and Proposed Voir Dire shall be submitted by _____.

Joint Pre-trial Statement ("JPTS"): A JPTS shall be submitted by _____. The JPTS shall conform to the Court's Individual Practices and Supplemental Trial Procedure Rules.

Memoranda of Law addressing those issues raised in the JPTS shall be submitted by _____. Responses to the Memoranda shall be submitted by _____. There shall be no replies.

Additional Conference(s) _____ at _____.

For non-jury trials only: Proposed Findings of Fact and Conclusions of Law shall be submitted in accordance with the Court's directions.

ANY REQUEST FOR AN EXTENSION MUST BE MADE IN WRITING, AT LEAST ONE WEEK BEFORE THE DEADLINE IN QUESTION, AND MUST STATE THE OTHER PARTY'S POSITION.

Other Directions: Once all papers have been submitted, a final pre-trial conference will be held which shall be attended by trial counsel.

In the event a dispositive motion is made, the dates for submitting the Memoranda of Law, Requests to Charge, Proposed Voir Dire, and JPTS shall be adjourned from those shown above, and shall then begin to run (in the same timing sequence as set forth above) from three (3) weeks from the filing date of the decision on the motion.

Otherwise, if an adjournment is granted, then all subsequent events are simultaneously adjourned in the same timing sequence as set forth above, except any scheduled conferences, which are adjourned sine die.

At any time after the ready for trial date, counsel must notify the Court and their adversaries in writing of any potential scheduling conflicts that would prevent a trial at a particular time, including, but not limited to, trials and vacations. Such notice must come **before** counsel are notified by the Court of an actual trial date, **not after**. Counsel should notify the Court and all other counsel in writing, at the earliest possible time of any particular scheduling problems involving out-of-town witnesses or other exigencies.

All counsel are responsible for having copies of and complying with the contents of the current version of the Court's Individual Practices and Supplemental Trial Procedure Rules, which may be obtained from the Courtroom Deputy or on-line at <http://www.nysd.uscourts.gov/judges/USDJ/batts.htm>. Periodically, the Court will revise its Individual Rules. Notice of these revisions or amendments will be posted in the **New York Law Journal** and copies will be available at the **Cashier's Window** in the Clerk's Office at 500 Pearl Street.

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN SANCTIONS.

No consolidation w/ 10 Civ 5910; the Court will not take assignment of that case either.

This case put on suspense for 90 days to await determination by Judge Gerber on July 2010 Settlement and Assignment objection, which could resolve this case. Parties to report to Court in 90 days on status.

SO ORDERED.

DATED: New York, New York

August 27, 2010

Deborah A. Batts

DEBORAH A. BATTIS, U.S.D.J.