Hearing Date and Time: March 3, 2011 at 9:45 a.m., ET
Objection Deadline: February 11, 2011 at 4:00 p.m., ET

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OBJECTION OF TOWN OF SALINA TO AMENDED JOINT CHAPTER 11 PLAN PROPOSED BY MOTORS LIQUIDATION COMPANY, f/k/a/ GENERAL MOTORS CORPORATION

The Town of Salina of the State of New York (the "Town"), by and through its undersigned counsel, hereby submits this Objection to the Amended Joint Chapter 11 Plan Proposed by Motors Liquidation Company, f/k/a General Motors Corporation, and respectfully states as follows:

I. BACKGROUND

1. By Order dated December 8, 2010, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") approved the revised Disclosure Statement for the Debtors' Amended Joint Chapter 11 Plan, dated December 7, 2010 (the "Disclosure Statement").

2. A hearing on the confirmation of the Debtors' Amended Joint Chapter 11 Plan (the "Plan") is scheduled for March 3, 2011 at 9:45 a.m. Objections to the Plan are to be filed with Bankruptcy Court no later than February 11, 2011 at 4:00 p.m.

3. The Town of Salina has filed three claims in the Debtors' cases, resulting from the cleanup of various sites contaminated by the Debtors within the Town of Salina and the County of Onondaga in the State of New York.

4. These claims filed assert the following claims against the Debtors: (i) approximately $12,498,818.63 in cost reimbursement for environmental contamination at the Onondaga Lake Superfund Site (the "Onondaga Lake Claim"); (ii) approximately $18,577,319.00 in cost reimbursement for environmental contamination at the former-Town of Salina Landfill (the "Landfill Claim"); and (iii) an amount to be determined, but estimated to be in excess of $10,000,000.00 in cost reimbursement for environmental contamination at the Lower Ley Creek sub-site (the "Lower Ley Creek Claim") (collectively, the "Town of Salina Claims").

5. On or about January 11, 2010, the Debtors filed a Motion for an Order for authorization to implement alternative dispute resolution procedures, including mandatory mediation, to establish a procedure for resolving Unliquidated/Litigation claims in order to quantify the amounts of general unsecured claims (the "ADR Procedures Motion").

6. On or about February 2, 2010, the Town filed opposition to the ADR Procedures Motion (the "ADR Objection"). As a result of the ADR Objection, the Town's claims were excluded from the ADR procedures pursuant to Court Order dated February 23, 2010 (the "ADR Procedures Order").

7. On October 20, 2010 the United States of America filed a Notice of Lodging of Proposed Settlement Decree of the Environmental Response Trust Consent Decree and Settlement

Agreement (the "ERT Notice"). The Town filed an Objection to that proposed Settlement Decree and appeared at the public meeting held on December 15, 2010 in Syracuse, New York in opposition to its approval.

8. On or about February 11, 2011, the Town filed an Administrative Proof of Claim in the approximate amount of $3.8 million based on the continuing environmental contamination emanating from the Debtors' real property located in the Town of Salina and the associated remediation expenses that have been incurred during the pendency of the bankruptcy cases.

II. OBJECTIONS TO THE PLAN

A. All General Unsecured Creditors Will Not Be Treated Equally

9. The Town has reviewed the Plan and objects to Confirmation on the basis that it is inequitable and fails to comply with the requirements of Section 1129, which are more fully set out below.

10. At the outset, it is impossible for the Town to determine if there will be sufficient funds set aside to distribute the same dividend to unsecured creditors whose claims are allowed after Confirmation as those creditors who are allowed and paid upon Confirmation. The Debtors' Disclosure Statement estimated the total liability for unsecured claims to be approximately $34.4 to $39 Billion. However, there have been rumors about estimation hearings that may radically reduce the estimated amount of those claims to be provided for in the Plan. Without this Court issuing orders that actually disallow many of those claims, however, the estimate of the total liabilities of the general unsecured class should not be reduced. A premature reduction in those claims will result in a shortfall in funds set aside to pay general unsecured claimants like the Town who are deemed allowed after the confirmation process. As a result, all of the unsecured creditors in Class 3 would

not be treated equitably and equally under the Plan and the GUC Trust, in violation of 11 U.S.C. §1129(b).

11. The Town further objects to the Debtors' Plan and submits that it should not be confirmed because it fails to meet all of the other requirements of 11 U.S.C. §1129, as more fully outlined below.

12. In late 2010, the Town was contacted by Alix Partners, with a representation that an analysis of the Town's claims would be undertaken, and, hopefully, they would be resolved. In conjunction with those discussions, the Town complied with various requests for detailed technical information in order to establish its claims, particularly with respect to the Town of Salina Landfill Site.

13. In spite of the Town's efforts to have its claims resolved well prior to the confirmation hearing, Alix Partners unilaterally suspended its discussions with the Town pending unknown negotiations with the United States Environmental Protection Agency ("USEPA") and the United States Department of Justice ("USDOJ"). The Town was informed that Alix Partners was "negotiating the site (Onondaga Lake and all of the derivative sites) with the USEPA and the USDOJ and do not currently have plans to discuss this claim with the Town of Salina until those talks have concluded." Despite further requests for clarification, there was no additional information or explanation regarding why the Town was not a part of those discussions, which is especially troublesome given the Town's continuing obligations and the tremendous expenses incurred in the remediation of the Landfill Site.

14. It would appear that, in spite of the original stated "good intentions" expressed by Alix Partners on behalf of the Debtors, the Debtors have determined they will not undertake further efforts to resolve the Town's claims by the confirmation date.

15. Without a resolution of the Town's Claims, they will not be "allowed" under the terms of the Proposed Plan upon Confirmation. Pursuant to paragraph 1.54 of the Plan, the Town's claims are considered "disputed" because its claims were filed by the applicable deadline, but vary from the nature and amount of such claim as listed on the Schedules. (The Town was not listed on the Schedules, although the New York State Department of Environmental Conservation ("NYSDEC") and EPA were listed as contingent and disputed). Having its claims unresolved and treated as disputed will likely result in the Town being treated differently than other general unsecured creditors who are paid upon confirmation of the Plan, in violation of 11 U.S.C. §1129(b).

16. The Plan provides for the establishment of the GUC Trust for the benefit of general unsecured creditors. The GUC Trust Administrator is responsible for determining claim amounts and making distributions to unsecured claimants that are to be paid after confirmation, such as the Town.

17. It is respectfully submitted that the Plan should not be confirmed in its current form, until there are detailed protections included that ensure equitable treatment among: (i) those general unsecured claims that are deemed allowed upon confirmation; and (ii) those claims, such as the Town's claims, which may be established and paid after confirmation.

18. One alternative is for the Debtors to set aside funds for the unresolved claims in an amount that would be sufficient to pay those claims as if allowed in full on their face value, pending a further Court Order reducing or expunging those claims. Another alternative is for the Confirmation Order to contain a provision that limits the amount of distributions to Class 3 Claimants to payment of only 50% of amounts owed to them, and only upon a final allowance or disallowance of all general unsecured claims shall the remainder be paid. In either event, there should not be any distribution until after the Effective Date of the Plan.

19. This proposed holdback procedure would allow an initial distribution on those claims that are deemed allowed as of the Confirmation Date, but would provide for a subsequent distribution to the entire general unsecured creditor body once all of the unsecured claims are resolved. It would ensure that the ultimate distribution to general unsecured claims not allowed on the date of confirmation is equivalent to the distribution to the allowed unsecured creditors, preventing discrimination among unsecured creditors and ensuring compliance with §1129(b).

20. If the Plan is confirmed in its current form, it is highly likely that the payments made to allowed "pre-confirmation" claims would be higher than the payments made to allowed "post-confirmation" claims. However, the Plan does not provide any mechanism to require those "pre-confirmation" allowed claims to disgorge any distribution that proves to be inequitable. More importantly, to seek disgorgement from those parties that were paid on their allowed claims immediately after confirmation would be virtually impossible and create unnecessary chaos in this case. To avoid that result, the Plan should be modified to ensure that the holdbacks are truly sufficient to meet the Debtors' required payments to all Class 3 Claimants.

B. The Plan Improperly Discriminates Among General Unsecured Environmental Claimants

21. As fully detailed below, the Town has vehemently objected to the Environmental Response Trust Agreement and Environmental Response Trust Consent Decree and Settlement Agreement (the "ERT"). The Town believes its environmental claims should be included in the ERT, and therefore, it objects to the classification of its claims as part of Class 3 and maintains that its claims should be properly classified as Class 4 Claims. The Plan provides that Class 4 Environmental Claimants will receive either 100% of their allowed claims under the terms of the ERT, or they will receive immediate cash payments pursuant to the Priority Order Sites Consent Decrees and Settlement Agreements. The Debtors' Plan does not explain or justify the different

treatment between ERT Environmental Claimants, the Priority Order Site Claimants, and those Class 3 Claimants, like the Town, whose claims are also the result of the Debtors' environmental contamination. There is no rationale for the Debtors' proposed payment of 100% on its environmental liabilities for some sites but not others. While the Debtors attempt to distinguish the sites by "owned" sites that are the subject of ERT and "non-owned" sites, these arbitrary, artificial lines do not recognize the nature of the existing, continuing and/or migrating contamination that resulted directly from the GM's operations in the Town. Consequently, the Debtors' distinction and proposed classification and treatment of the environmental claims under the Plan should not be permitted.

22. The Debtors' stated rationale for differentiating between "owned" and "non-owned" sites becomes even more incredible when reviewing the provisions in the Plan that address those "Priority Order Sites" that are the subject of an order requiring performance of environmental action. The Plan identifies, on Exhibit "E," six certain "Priority Sites" that are the subject of separate settlement agreements, all of which involve environmental claims on non-owned sites.

23. The "Priority Site" Claimants are to receive specific cash payments on their claims upon approval of their settlement agreements, and some of the parties to the settlement agreement then also share in the Plan's distribution to general unsecured creditors as Class 3 Claimants. There is no justification or explanation for that cash payout and superior treatment for those environmental claimants, whose claims appear to be virtually identical to the Town's claims, or for not including the Town as a Priority Site.

24. For example, the Priority Site Consent Decree and Settlement Agreement for the Wheeler Pit Site in Wisconsin is based on the Debtors' liability to conduct remedial actions pursuant to a Unilateral Administrative Order issued by the EPA in 1991. The EPA and the State of

Wisconsin filed proofs of claim for both past and/or future response costs incurred or to be incurred under CERCLA. Under the Wheeler Pit Settlement, the Wisconsin Department of Natural Resources will receive $385,991 on the Effective Date of the Plan, and the United States, on behalf of the EPA, shall have an allowed General Unsecured Claim in the amounts of $95,045 for response costs incurred through May 31, 2006.

25. The Consent Decree and Settlement Agreement for the Sioux City Site in the State of Iowa is similar. The agreement provides for payment of $6,476,634 to the EPA which shall be "in settlement and satisfaction of any claim for past and future response costs alleged in the (Iowa) State Proof of Claim."

26. The Town's largest claim, the Landfill Claim, also includes both past and future response costs incurred or to be incurred by the Town under CERCLA, pursuant to both an October 29, 1997 Consent Order entered into between the Town and NYSDEC, as well as a Record of Decision which outlines the required investigatory and remedial actions as issued by USEPA and NYSDEC in March 2007. To date, the Town has incurred $5,485,160.06 in investigation, remedial and other costs pursuant to the Record of Decision.

27. The Record of Decision outlines specific response actions that are necessary to protect the public health or welfare and the environment from actual or threatened releases of hazardous substances. As detailed below, the technical data and evidence demonstrates that the Debtors' operations at the IFG Site, as well as its disposal of PCB related wastes at the Landfill Site, resulted in the Landfill Site being classified as an Inactive Hazardous Waste Site by NYSDEC. Given these facts, there can be no rational explanation why the Landfill Site should not be included as a Priority Site since it is similar in nature to the type of Priority Sites that are already being paid out by the Debtors.

28. Consequently, regardless of the Classification scheme set forth in the Plan, it cannot be confirmed because it unfairly discriminates amount similarly situated creditors (see 11 U.S.C. 1129(b)). In In re 222 Liberty Associates, 108 B.R. 971 (Bankr. E.D. Pa 1990), the Court denied confirmation of a plan because it unfairly discriminated between similarly situated creditors. The 222 Liberty Court noted that a plan proponent may classify claims separately, but it may not deny equal treatment to similarly situated creditors absent a valid basis for the discrimination. Id. at 991. In its analysis, the Court applied the following test for determining whether a plan unfairly discriminates: different treatment is permissible if and only if the debtor is able to prove a reasonable basis for the degree of discrimination contemplated by the plan. Id. at 991 (quoting In re Furlow, 70 B.R. 973, 978 (Bankr. E.D. Pa 1987)).

29. In the case at hand, the Plan's treatment between similarly situated environmental claimants is unfair discrimination at its worst. There can be no rational explanation that can justify the disparate treatment between: (i) the Class 4 Environmental Claimants that are stated to receive 100% repayment under the ERT; (ii) the Priority Order Site Claimants that are to receive cash plus an immediate allowed distribution as a Class 3 claimant; and (iii) the Class 3 Environmental Claimants, such as the Town, that may receive some unknown non-cash amount at some point in the future. The Debtors simply cannot provide any reasonable basis for that degree of discrimination among the environmental claimants. In the absence of such an explanation, the Plan should not be confirmed.

C. Objection To The Proposed Environmental Response Trust Consent Decree And Settlement Agreement And Classification Of The Town's Claims As Class 3 Claims

30. The Plan and the Notice of Lodging of Proposed Settlement Agreement with respect to approval of the ERT are not consistent. It is unclear if the proposed ERT will be approved upon confirmation of the Plan or if the United States will follow the procedure in its ERT Notice and

separately request that the Court approve the ERT. Pursuant to paragraph 6.4(a) of the Plan, "Entry of the confirmation order shall constitute approval of the Environmental Response Trust Consent Decree and Settlement Agreement pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019." However, the ERT Notice requires the United States to solicit public comments and to report those comments to the Court, along with its responses to those comments. At that time, if appropriate, the USA would request that the Court approve the ERT. This process is also reiterated in the Disclosure Statement (Section II (F)(13)).

31. The Town, among others, provided extensive written and verbal comments and objections to the ERT during the public comment period and at the public meeting held on December 15, 2010, as more fully detailed in the Town's correspondence to the USDOJ dated December 15, 2010 (the "ERT Objection"). A copy of the ERT Objection without exhibits is attached hereto as Exhibit "A" and fully incorporated herein.

32. To date, no responses from the United States have been filed.

33. Because of these inconsistencies in the Plan and the ERT Notice, it is unclear if the Debtors are attempting to obtain court approval of the ERT at the Confirmation Hearing, even though the public's comments and the United States' responses thereto have not been submitted to the Court. In the event that the Debtors are seeking approval of the ERT in conjunction with the Confirmation Hearing, the Town incorporates its ERT Objection herein, and reserves all rights to further object to the approval of the ERT at the appropriate time.

34. The Town objects to and requests that specific revisions be made to the ERT which seeks to create the Environmental Trust Fund. The Town objects to the arbitrary limitations the United States has placed on the proposed distribution of the approximately $641 million comprising the Environmental Trust Fund. In particular, the Town opposes the ERT's ban on the use of trust

monies to address the "downstream" liabilities associated with Old GM's Inland Fisher Guide facility (the "IFG Site") and, in particular, the disposal, discharge and/or release of hazardous wastes generated by Old GM within the lower portions of Ley Creek, Onondaga Lake, and the former Town of Salina Landfill Site (the "Landfill Site").

35. In support of its trust fund scheme, the ERT artificially and arbitrarily divides the lower portion of Ley Creek from that portion of Ley Creek located upstream of the Route 11 Bridge, irrespective of the voluminous technical data collected by the USEPA and the NYSDEC proving that Old GM's operations at the IFG Site have resulted in decades of PCB releases into the entirety of Ley Creek and the remaining Onondaga Lake system. The Town further objects to the arbitrary and capricious decision made by the United States to exclude from compensation under the ERT Old GM's liability to the Landfill Site, notwithstanding that such liability is a direct result of Old GM's historical operations at the IFG Site. The hazardous waste disposal practices conducted at the IFG Site resulted in the disposal of hundreds of tons of PCBs and PCB-related waste at the Landfill Site, which is currently being remediated by the Town pursuant to a Record of Decision issued by USEPA and NYSDEC in March 2007.

36. The ERT is clearly in violation of CERCLA's mandate that a consent decree be fair, reasonable, and consistent with its statutory goals. If left unmodified, the ERT will result in the taxpayers of the Town, County and State of New York solely bearing the financial burden of addressing the decades of contamination Old GM and its IFG Site have caused. Moreover, there is no justification for the exclusion of Lower Ley Creek sub-site and/or the Landfill Site from compensation under the ERT, since these liabilities are inextricably linked to the IFG Site. What is particularly offensive and arbitrary is how the United States on one hand has purposefully excluded these IFG Site-related liabilities from compensation, while at the same time pursuing enforcement

actions against the Town and other non-GM parties for the cleanup (and cost recovery) associated with these same liabilities.

37. The Town therefore requests that the proposed ERT be modified to include not only funding for the cleanup of the entirety of Ley Creek, but also for the liability Old GM faces as a generator and arranger for disposal of IFG Site-related hazardous waste at the Landfill Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq*. A decision by the United States to deny the modifications requested by both the Town and Onondaga County will result in the Town's taxpayers solely bearing the cost of these Old GM liabilities, with the United States (through its debtor-in-possession financing of Old GM) benefitting from the expenditure of trust monies and the concomitant redevelopment of these now, federally-controlled assets.

38. Additionally, the County of Onondaga in its November 24th, 2010 letter to DOJ has provided numerous comments on the proposed ERT in light of Old GM's liability to the Lower Ley Creek sub-site and the Onondaga Lake NPL Site (the "Onondaga County ERT Objection"). A copy of the Onondaga County ERT Objection is attached hereto as Exhibit "B" and incorporated herein in its entirety. The Town submits the following supplemental comments with respect to the Lower Ley Creek sub-site, as well as Old GM's liability as a potentially responsible party ("PRP") pursuant to CERCLA for the Landfill Site.

1. Lower Ley Creek

39. A voluminous amount of technical data has been collected by NYSDEC and USEPA which demonstrates that the discharge of PCBs and PCB-related wastes from the IFG Site has impacted the entirety of Ley Creek.

40. The sediment samples collected upstream of the Landfill Site contained higher concentrations of PCBs than downstream samples, indicating that the upper portions of Ley Creek (above the Route 11 bridge) were the source of PCB contamination in Lower Ley Creek. A Remedial Investigation/Feasibility Study was further performed by Old GM wherein PCBs were detected in the dredge spoils at concentrations up to 466 mg/kg. The results of this study linked the presence of PCBs along the entire length of Ley Creek to the historical discharges of PCBs from the IFG Site.

41. In June, 1996 NYSDEC prepared a Site Summary Report for the IFG Site as part of its sub-site status determination. After completing its investigation, NYSDEC and USEPA concluded that the IFG Site contributed to the presence of PCBs within the entirety of Ley Creek. Soils, groundwater, industrial wastewater, and stormwater were all confirmed as containing PCBs and other hazardous substances. The report further states that "[f]rom 1954 until 1963, process wastewater [from the IFG Site] discharged directly to Ley Creek presumably with little or no treatment." NYSDEC thus concluded that, due to the presence of PCBs and other hazardous substances at the IFG Site, it represented "a release and a continued threat of release [of hazardous substances] to the Onondaga Lake System."

42. In July, 2010 USEPA further acknowledged that "the majority of the contamination in Lower Ley Creek sediment has come from various sources and/or facilities upstream and on Ley Creek, including the former General Motors Corporation – Inland Fisher Guide Facility." USEPA's evaluation does not identify any other alleged sources of PCB contamination besides the IFG Site in the Lower Ley Creek.

43. The technical analyses clearly demonstrate that there is no legitimate basis to divide the upper portion of Ley Creek from its lower portion when determining Old GM's environmental

liability. To the contrary, the division set forth in the ERT is a merely fictional; one created to arbitrarily cut off Old GM's liability, while ensuring both an overwhelming "orphan share" of liability and protracted future litigation between DOJ and the remaining PRPs.

2. The Former Town of Salina Landfill Site

44. In addition to its liabilities to the Lower Ley Creek sub-site and Onondaga Lake NPL Site, Old GM's historical operations at the IFG Site resulted in Old GM becoming a PRP for the cleanup of the Landfill Site. Old GM conducted various manufacturing processes at the IFG Site including plating; buffing; forming and finishing metal automobile parts; junction moldings; painting; and assembling plastic body and trim components for automobiles. The evidence collected by NYSDEC shows that Old GM's disposal practices at the IFG Site resulted in the presence of PCBs and other hazardous substances and wastes at the Landfill Site.

45. According to USEPA and NYSDEC, between 1962 and 1973, Old GM disposed PCBs and PCB-related hazardous wastes at the Landfill Site. PCBs (including Aroclor 1248) known to be present at the IFG Site, have also been detected in various media associated with the Landfill Site. This undeniable connection between the Aroclor 1248 PCBs generated at the IFG Site, and those present in the soils and groundwater at the Landfill Site, confirms that Old GM's historical waste practices at the IFG Site directly resulted in the disposal of PCBs and PCB wastes at the Landfill Site, thus supporting a finding that Old GM is a PRP with respect to the Landfill Site pursuant to Section 107(a)(3), 42 U.S.C. § 9607(a)(3) of CERCLA.

46. The main consideration for Old GM's PRP liability is the acknowledgement that, but for the presence of PCBs and other hazardous substances generated and disposed of by Old GM, the cleanup of the Landfill Site would have been completed as a 6 N.Y.C.R.R. Part 360 municipal solid waste closure, as opposed to a Class 2 Inactive Hazardous Waste Site pursuant to 6 N.Y.C.R.R. Part

375. Because Old GM's disposal of PCBs and PCB-related waste resulted in a Class 2 listing of the Landfill Site, the associated cleanup costs are significantly higher, requiring that Old GM's allocated share of cleanup costs reflect this outcome. The Town therefore projects that Old GM's disposal of PCB-related wastes resulted in a 56% incremental increase in the total cost to be incurred in remediating the Landfill Site.

47. Based on its recent bid award for phase one of the cleanup, the Town has calculated that the total present worth cost of remediating the Landfill Site is $29,592,701. Old GM's estimated allocated share of these costs is, at a minimum, $19,201,701, representing the incremental costs associated with remediating the Landfill Site as a Class 2 Inactive Hazardous Waste Site due to GM's disposal of PCBs and other hazardous substances.

48. The ERT, in its current form, however, bars the Town from recovering any portion of this cost from Old GM despite the source of its liability being directly (and unequivocally) linked to the IFG Site. The ERT thus fails to satisfy the applicable standard for judicial approval of CERCLA settlements, and violates that statute's objective that consent decrees, wherein the United States provides covenants not to sue, be fair, reasonable and consistent with CERCLA's goals of cleaning up contaminated sites.

3. Miscellaneous Comments on Environmental Response Trust

49. In addition to the comments provided in the Onondaga County ERT Objection on pages 10-12, the Town requests that the following revisions be made to the proposed ERT.

50. The GM-IFG Site as described in ¶ 63 of the ERT includes both the area "within the IFG Syracuse facility property boundaries" and "the property extending from the facility property boundaries to the Route 11 Bridge". The phrase "the property extending from the facility property boundaries to the Route 11 Bridge" is at best ambiguous. It must be defined more precisely and the

scope of the work intended to be funded by the trust should be described. To the extent that work does not include both in and out of Ley Creek response actions, the scope should be amended to include all such required activities and if necessary, the cost estimate and Trust funding should be modified accordingly.

51. Paragraph 94 of the ERT concerning Covenants Not to Sue proposes that the covenants relate to potential claims or causes of action against the Environmental Trust "under CERCLA, RCRA, and State environmental statutes, as well as any other environmental liabilities asserted in the Governmental Proofs of Claim." The phrasing of the covenant is at best ambiguous and suggests an agreement to pursue claims or causes of action that may arise after the Trust is funded (e.g., current or future on-going permit violations). The language should be amended to narrow the scope of the proposed covenants such that future enforcement of post-funding environmental violations is not precluded.

52. Paragraph 99 of the ERT sets forth the Debtors' and the Trust's proposed covenant not to sue the United States or states for potential CERCLA or RCRA claims. Given that proposed covenant, what steps were taken and to what extent was any allocation of United States or state liabilities used to derive the funding proposed to be provided to the Trust for any individual site?

53. Paragraph 100 (ii) of the ERT carves out an exception to the Covenants Not to Sue for Lower Ley Creek that is defined as "the entire portion of Ley Creek which is downstream from the Route 11 Bridge." That phrasing is much too ambiguous and uncertain. It should be modified to read as follows: "the existing channel from Route 11 to Onondaga Lake, Old Ley Creek and any PCB dredge disposal areas located west and downstream of the Route 11 Bridge and/or otherwise not the "Ley Creek PCB Dredging Site" located immediately downstream of GM-IFG Syracuse."

54. Paragraph 100 (iv) of the ERT carves out an exception to the covenants Not to Sue for future acts that create liability but creates an exception to the carve-out for "continuing releases related to the Debtors' conduct prior to the Effective Date." The exception to the exception should not apply to on-going permit violations whether or not they can in any way be related back to pre-Effective Date conduct. In this case, the latest publicly available information indicates on-going PCB discharges in violation of applicable SPDES permit limits; that conduct should not be exempted.

55. Paragraphs 100 and/or 105 of the ERT should confirm that "covered matters" does not include violations of the Clean Water Act or any state analogs to the Clean Water Act.

56. The term "any general unsecured claim" in paragraph 100 (ii) of the ERT should be replaced with the term "any claims." This revision ensures the broadest reservation of rights by the United States since some of the environmental claims are still ongoing and not necessarily reflected in the proof of claims filed, to date, in the Old GM bankruptcy proceeding.

57. The phrase "other than claims or causes of action for migration of Hazardous Substances emanating from a Property" in paragraph 100 (ii) must be deleted since it is inconsistent with the ERT's reservation of rights with respect to the Lower Ley Creek and Lake Bottom sub-sites. The basis of the claims preserved in paragraph 100(ii) is that PCBs and other hazardous substances have actually migrated from the IFG Site and contaminated those sub-sites.

58. The second sentence on page 60 of the ERT (with paragraph 100) must be revised so that the ERT is also without prejudice as to any liability of Debtors' successors, assigns, officers, directors, employees, and trustees pursuant to Section 113(f) of CERCLA. The Town further objects to the ERT's ban on future acts creating liability under CERCLA, RCRA and/or state law if based on continuing releases related to conduct prior to the Effective Date of the ERT.

59. Consistent with comments above, paragraph 105 of the ERT must be revised by deleting the phrase "including releases of Hazardous Substances from any portion of the Properties, and all areas affected by migration of such substances emanating from the Properties...," since it undermines the reservation of rights preserved in Article VIII of the ERT as to the Lower Ley Creek, Lake Bottom and Salina Landfill Sub-sites.

60. The arbitrary limitations that have been placed on the distribution of the ERT's trust monies will result in a significant financial burden being placed squarely on the Town, notwithstanding the fact that Old GM's IFG Site is solely or primarily responsible for the contamination existing at the Lower Ley Creek sub-site and the Landfill Site. The environmental data collected by USEPA and NYSDEC proves there is no legitimate basis to exclude these Old GM liabilities from compensation under the Environmental Trust Fund. To do so, will not only undermine the future efforts of the United States to address these environmental concerns, but unjustly place the burden of these liabilities solely on the shoulders of Town residents.

61. Based on the foregoing, the ERT and the Priority Order Sites Consent Decrees in their current form should not be approved, whether in conjunction with the Confirmation Hearing or otherwise. The technical analysis above demonstrates that there is no rational basis for dividing the contaminated properties and the claims resulting therefrom. The exclusion of the Town as a party to the ERT and a Class 4 Claimant improperly and unfairly discriminates between similarly situated claimants without justification. 11 U.S.C. §1122(a). As a result, the Town should be included as a party to the ERT (or, in the alternative, treated as a Priority Site Claimant), and should be treated as a Class 4 Claimant under the Plan, being paid 100% of its environmental claims.

D. Wilmington Trust Corporation And The GUC Trust Monitor

62. There are many potential conflicts of interest that Wilmington Trust Corporation ("WTC") may encounter in fulfilling its roles under the Plan. The Plan proposes that WTC act as the GUC Trust Administrator, as the Avoidance Action Trust Administrator, and as the entity that objects to disputed claims. Simply stated, WTC is wearing too many hats in this case.

63. Given the potential conflicts, the GUC Trust Monitor should not be chosen by WTC. The United States Trustee should ensure that the Monitor is independent and can unbiasedly oversee WTC's administration of the Trust to confirm distributions and holdbacks are appropriate, claims are timely resolved and paid, and the overall administration and expenses of the GUC Trust are proper.

64. In addition, the indemnification provisions for the GUC Trust Administrator should exclude any indemnification for a breach of fiduciary claims. The Town does not believe that WTC should not be indemnified from the Trust if it breaches its fiduciary duties, and that the Trust should bear that expense if WTC has acted inappropriately in carrying out its fiduciary obligations.

E. The Town Is Unable To Accept And Hold The New GM Stock

65. Assuming, arguendo, that the Town's claims are properly classified as Class 3 Claims, its claims will be paid through the GUC Trust. The GUC Trust contemplates the payment of the Class 3 Claimant's pro rata share of: (i) the new GM Securities, as defined therein (the "New GM Stock"); and (ii) the GUC Trust Units, in accordance with the terms of the GUC Trust and the GUC Trust Agreement.

66. The New GM Stock will be an equity stake in a publicly traded corporation. Pursuant to Article VIII § 1 of the New York Constitution, the Town is precluded from accepting and owning the New GM Stock as that distribution is proposed under the Debtors' Plan.

67. The plain language of the New York Constitution prohibits a municipality from directly or indirectly owning stock in any private corporation. The New York State Constitution provides:

> "No county, city, town, village or school district shall . . . become directly or indirectly the owner of stock in, or bonds of, any private corporation or association . . . ." New York Constitution Art. VIII §1.

In interpreting this constitutional provision, the New York State Comptroller has found that the ownership of stock in private corporations violates Article VIII § 1. See N.Y. Opns. St. Comp. 68-51(1968).

68. Despite having been raised prior to approval of the Disclosure Statement, the Plan has not addressed or resolved the issue regarding the Constitutional restrictions and the impact those restrictions may have on the municipal Claimants and their proposed distributions under the Plan. The Disclosure Statement indicates that the Debtor is willing to work with the municipalities to identify and implement a solution to the extent practical and economically neutral to the Debtors, and presumably such a solution would provide the Town with the financial benefit that should be associated with the acquisition of the New GM Stock. However, no efforts have been made to resolve this issue. If not properly addressed in the Plan, it would result in a windfall for the other general unsecured claimants who would benefit from those restrictions at the expense of the Town. Clearly such a result would not be equitable, especially since under the terms of the Plan as currently proposed, the Town and its taxpayers will be forced to bear the burden of the additional environmental clean up that the Debtors are abandoning under the current Plan.

F. Bankruptcy Court Jurisdiction Over Certain Environmental Matters Should Be Limited

69. Paragraph 11.1 of the Plan provides the Bankruptcy Court with "exclusive" jurisdiction of all matters arising under, arising out of, or related to the Chapter 11 Cases and the

Plan after confirmation. This language is simply too broad when dealing with environmental issues. While the Bankruptcy Court retains jurisdiction over various matters related to the estate administration and Plan consummation, its post-confirmation jurisdiction should not be "exclusive." As a result, "exclusive" should be deleted from Paragraph 11.1 of the Plan.

70. The Plan also provides that the Debtors or the GUC Trust Administrator may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claims pursuant to Section 502(c) of the Code, and the Bankruptcy Court shall retain jurisdiction to estimate at any time during litigation concerning any objection to Claim (Plan, Paragraph 7.3). It further states that: "In any event that the Bankruptcy Court estimated any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or the maximum limitation on such claim as determined by the Bankruptcy Court." These estimation provisions, however, do not apply to Property Environmental Claims that are resolved by the Environmental Response Trust or the Priority Order Sites (Plan Paragraph 1.114) and should similarly not apply to the state and local municipalities holding environmental claims. It should be clear that the Bankruptcy Court does not retain exclusive jurisdiction to determine the environmental claims of the state and tribal governments and municipalities and have that determination binding on those entities. The Plan should therefore be amended to reflect: "The Bankruptcy Court's jurisdiction with respect to any environmental claims, including the estimation of any such claims of state and tribal governments and municipalities concerning environmental liabilities, should be concurrent with the jurisdiction of other courts of competent jurisdiction over such matters."

G. Overbroad Releases

71. In addition to the deficiencies discussed above, the Plan also provides overly broad releases and exculpation to numerous parties in Paragraphs 12.5 and 12.6 of the Plan.

72. Specifically, the Plan proposes to release, *inter alia*, the Debtors' former directors, management, all post-Commencement date advisors, consultants and professionals to the Debtors and the DIP Lenders, the Creditor's Committee, the Indentured Trustees, etc. (the "Released Parties") from virtually any liability (except, *inter alia*, from gross negligence, etc.). The Exculpation clause in Paragraph 12.6 also provides that many of the same Released Parties shall not have or incur any liability in connection with, related to or arising out the Chapter 11 cases, etc., or related to the administration of the Plan or the property to be distributed under the Plan. These overly broad releases violate section 524(e) and therefore the Plan cannot be confirmed.

73. As was recognized by the Bankruptcy Court for the Southern District of New York in In re XO Communications, Inc, 330 B.R. 394 (Bankr. S.D.N.Y. September 23, 2005), ". . . the Second Circuit in Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.), 416 F.3d 136 (2d Cir. 2005) ("Metromedia"), clarified its previous holding in Drexel where it "held that in bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan." XO Communications, 330 B.R. at 436 (quoting Metromedia, 416 F.3d at 141; SEC v Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992)). It is well established that such non-debtor releases are proper only in "rare cases". Id.; see also Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.), 280 F.3d 648, 658 (6th Cir. 2002) ("Such an injunction is a dramatic measure to be used cautiously. . . ."); Gillman v. Cont'l Airlines (In re Cont'l Airlines), 203 F.3d 203, 212-13 (3d Cir. 2000) (recognizing that nondebtor releases have been approved only in "extraordinary cases")).

74. Courts should be wary to approve non-debtor releases because there is no explicit authority for such releases except at section 524(g) of the Bankruptcy Code which applies only in

asbestos cases, and only where specified conditions are satisfied, including the creation of a trust for future claimants. Metromedia, 416 F.3d at 142.

75. Likewise, it has been recognized that "a nondebtor release is a device that lends itself to abuse. By it, a nondebtor can shield itself from liability to third parties. In form, it is a release, in effect, that may operate as a bankruptcy discharge arranged without a filing and without the safeguards of the [Bankruptcy] Code." Id.

76. "A nondebtor release in a plan of reorganization should not be approved absent the finding that truly unusual circumstances render the release terms important to success of the plan." Id. at 143 (comparing its conclusion to the holding in Dow Corning, 280 F.3d at 658, which requires a bankruptcy court to make "specific factual findings that support its conclusions" before approving nondebtor releases).

77. As to such considerations, the Second Circuit noted that "courts have approved nondebtor releases when:" (1) "the estate received substantial consideration," citing Drexel, 960 F.2d at 293, (2) "the enjoined claims were channeled to a settlement fund rather than extinguished," citing MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93-94 (2d Cir.1988), and Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 701 (4th Cir.1989), (3) "the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution," A.H. Robins, 880 F.2d at 701, and (4) "the plan otherwise provided for the full payment of the enjoined claims," Id.; see also Metromedia, 416 F.3d at 142.

78. However, the Second Circuit cautioned in Metromedia that "this is not a matter of factors and prongs. No case has tolerated nondebtor releases absent the finding of circumstances that may be characterized as unique." XO Communications, 330 B.R. at 437 (quoting Id. at 142-43

(citing Dow Corning, 280 F.3d at 658; Cont'l Airlines, 203 F.3d at 212-13; Drexel Burnham, 960 F.2d at 288-93)).

79. It has not been demonstrated, nor is it likely that any of the Releases or related Exculpations in Paragraphs 12.5 and 12.6 are "essential" or "important" to the success of the Plan, or that unique circumstances exist to grant the releases requested.

H. The ADR Procedures Should Not Be Imposed On The Town

80. The Plan provides that the GUC Trust Administrator will be responsible for the prosecution of objections to General Unsecured Claims. It is unclear if the Debtors are attempting to have the ADR procedures imposed upon the Town for the establishment of the amount of its claims. As outlined above, the Town previously objected to the ADR Procedures Motion and was specifically excluded from the ADR Procedures Order when it was entered. Therefore any Confirmation Order should adopt this ruling and preclude ADR Procedures from being utilized by the GUC Trust Administrator when seeking to establish or object to the Town of Salina Claims.

I. Additional Objections To The Plan

81. Pursuant to Section 5.2 of the Plan, any remaining cash after funding of the various trusts and reserves, including the GUC Trust, should be paid to the DIP Lenders. In the absence of a 100% payment on the Town's claims, those funds should not be returned to the DIP Lenders but should instead be used to increase the dividend to general unsecured creditors.

III. CONCLUSION

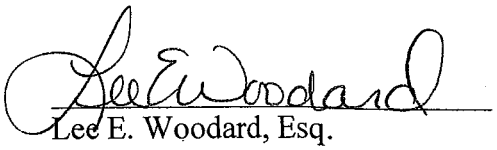
82. The Plan does not comply the statutory requirements of 11 U.S.C. §1129 and improperly discriminates against creditors with similar claims in violation of §1122 so that the Plan should not be confirmed without significant amendments that address the Town's objections. In addition, to the extent that it is properly before the Court, the ERT also should not be approved.

83. Nothing contained herein shall be deemed to be a waiver by the Town of Salina of any rights it may have under applicable law and the Town of Salina reserves the right to amend and supplement this Objection, and to object or otherwise respond to the approval, confirmation and implementation of the Debtors' Plan on any grounds outlined herein and any other grounds available.

WHEREFORE, the Town of Salina respectfully requests that the Court deny confirmation of the Plan, and request such other and further relief as this Court deems just and proper.

Dated: February 10, 2011

HARRIS BEACH PLLC



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December 15, 2010

Via U.S. Mail and Hand Submission at 12/15/10 Public Meeting

United States Department of Justice
c/o Ignacia S. Moreno, Assistant Attorney General
Environmental and Natural Resources Division
P.O. Box 7611
U.S. Department of Justice
Washington, DC 20044-7611

Re: In re: Motors Liquidation Corp., et al. D.J. Ref. 90-11-3-09754
Town of Salina, New York Comments on Proposed Environmental Response Trust Consent Decree and Settlement Agreement

To the U.S. Department of Justice:

The Town of Salina (the "Town") requests that specific revisions be made to the proposed Environmental Response Trust Consent Decree and Settlement Agreement (the "Settlement Agreement") which seeks to create the Motors Liquidated Company ("Old GM") Bankruptcy Environmental Trust Fund. In addition to the comments provided herein, the Town supports and incorporates those comments submitted to the U. S. Department of Justice by the County of Onondaga (the "County") in its November 24, 2010 correspondence.

The Town objects to the arbitrary limitations the United States has placed on the proposed distribution of the approximately $641 million comprising the Environmental Trust Fund.[1] In particular, the Town opposes the Settlement Agreement's ban on the use of trust monies to address the "downstream" liabilities associated with Old GM's Inland Fisher Guide facility (the "IFG Site") and, in particular, the disposal and discharge of hazardous wastes generated by Old GM within the lower portions of Ley Creek; Onondaga Lake; and the former Town of Salina Landfill Site (the "Landfill Site").

In support of its trust fund scheme, the Settlement Agreement artificially and arbitrarily divides the lower portion of Ley Creek from that portion of Ley Creek located

[1] The Town further objects to the nature of the notice the U.S. Department of Justice ("DOJ") has given with respect to both the Settlement Agreement and the December 15th public hearing. We submit that the notice given for the Settlement Agreement violates both applicable U.S. Bankruptcy Court procedures and 42 U.S.C. § 6973. The Town further finds the one-week notice of the public hearing unacceptable, and apparently designed to avoid meaningful public input.

upstream of the Route 11 Bridge, irrespective of the voluminous technical data collected by the U.S. Environmental Protection Agency ("USEPA") and the New York State Department of Environmental Conservation ("NYSDEC") proving that Old GM's operations at the IFG Site have resulted in decades of PCB releases into the entirety of Ley Creek and the remaining Onondaga Lake system. The Town further objects to the arbitrary and capricious decision made by the United States to exclude from compensation under the Settlement Agreement Old GM's liability to the Landfill Site, notwithstanding that such liability is a direct cause of Old GM's historical operations at the IFG Site. The hazardous waste disposal practices conducted at the IFG Site resulted in the disposal of hundreds of tons of PCBs and PCB-related waste at the Landfill Site, which is currently being remediated by the Town pursuant to a Record of Decision issued by USEPA and NYSDEC in March 2007.

The Settlement Agreement is clearly in violation of CERCLA's mandate that a consent decree be fair, reasonable, and consistent with its statutory goals. If left unmodified, the Settlement Agreement will result in the taxpayers of the Town, County and State of New York solely bearing the financial burden of addressing the decades of contamination Old GM and its IFG Site have caused. There is no justification for the exclusion of Lower Ley Creek sub-site and/or the Landfill Site from compensation under the Settlement Agreement, since these liabilities are inextricably linked to the IFG Site. What is particularly offensive and arbitrary is how the United States on one hand has purposefully excluded these IFG Site-related liabilities from compensation, while at the same time pursuing enforcement actions against the Town and other non-GM parties for the cleanup (and cost recovery) associated with these same liabilities.

The Town therefore requests that the proposed Settlement Agreement be modified to include not only funding for the cleanup of the entirety of Ley Creek, but also for the liability Old GM faces as a generator and arranger for disposal of IFG Site-related hazardous waste at the Landfill Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.* A decision by the United States to deny the modifications requested by both the Town and the County will result in our taxpayers solely bearing the cost of these Old GM liabilities, with the United States (through its debtor-in-possession financing of Old GM) benefitting from the expenditure of trust monies and the concomitant redevelopment of these now, federally-controlled assets.

The County of Onondaga in its November 24th, 2010 letter to DOJ has provided numerous comments on the proposed Settlement Agreement in light of Old GM's liability to the Lower Ley Creek sub-site and the Onondaga Lake NPL Site. The Town submits the following supplemental comments with respect to the Lower Ley Creek sub-site, as well as Old GM's liability as a potentially responsible party ("PRP") pursuant to CERCLA for the Landfill Site.

Lower Ley Creek

A voluminous amount of technical data has been collected by NYSDEC and USEPA which demonstrates that the discharge of PCBs and PCB-related wastes from the IFG Site has impacted the entirety of Ley Creek. A number of the reports containing this technical data were already provided to your office by the County.

As part of its remedial investigation of the Landfill Site, the Town, at the request of NYSDEC, also collected surface water samples along Ley Creek. Samples were collected just east of the Route 11 Bridge and at various locations extending downstream to the confluence of Beartrap Creek and Ley Creek. Shallow (0 to 6 inches below the sediment/water interface) and deeper (6 to 12 inches below the interface) sediment samples were also collected at the same surface water sample locations.

The results showed that both water and sediment samples contained PCBs (Aroclor 1248) above the applicable sediment screening criteria. More importantly, the sediment samples collected upstream of the Landfill Site contained higher concentrations of PCBs than downstream samples, indicating that the upper portions of Ley Creek (above the Route 11 bridge) were the source of PCB contamination in Lower Ley Creek. A Remedial Investigation/Feasibility Study was further performed by Old GM wherein PCBs were detected in the dredge spoils at concentrations up to 466 mg/kg. The results of this study linked the presence of PCBs along the entire length of Ley Creek to the historical discharges of PCBs from the IFG Site.

Pursuant to Section 104(e) of CERCLA, NYSDEC prepared in June, 1996 a Site Summary Report for the IFG Site as part of its sub-site status determination. A copy of that report is attached hereto as Exhibit "A." After completing its investigation, NYSDEC and USEPA concluded that the IFG Site contributed to the presence of PCBs within the entirety of Ley Creek due to dredging activities conducted along certain creek bed areas. Soils, groundwater, industrial wastewater, and stormwater were all confirmed as containing PCBs and other hazardous substances. The report further states that "[f]rom 1954 until 1963, process wastewater [from the IFG Site] discharged directly to Ley Creek presumably with little or no treatment." NYSDEC thus concluded that, due to the presence of PCBs and other hazardous substances at the IFG Site, it represented "a release and a continued threat of release [of hazardous substances] to the Onondaga Lake System."

These PCB findings were further supported by recent sampling collected by USEPA in 2010 along the lower portions of Ley Creek. As stated in the July 22, 2010 Onondaga Lake NPL Sub-site Evaluation for Lower Ley Creek, USEPA acknowledges that "the majority of the contamination in Lower Ley Creek sediment has come from various sources and/or facilities upstream and on Ley Creek, including the former General Motors Corporation – Inland Fisher Guide Facility." As also noted by the

County in its November 24th comment letter, USEPA's evaluation does not identify any other alleged sources of PCB contamination in the Lower Ley Creek. This is further acknowledged by USEPA in its October 30, 2009 correspondence notifying Old GM that it is a PRP to the Lower Ley Creek sub-site pursuant to CERCLA.

The technical analyses discussed above, as well as the data noted in the County's November 24th letter, clearly demonstrate that there is no legitimate basis to divide the upper portion of Ley Creek from its lower portion when determining Old GM's environmental liability. To the contrary, the division set forth in the Settlement Agreement is a merely fictional; one created to arbitrarily cut off Old GM's liability, while ensuring both an overwhelming "orphan share" of liability and protracted future litigation between DOJ and the remaining PRPs.

The Former Town of Salina Landfill Site

In addition to its liabilities to the Lower Ley Creek sub-site and Onondaga Lake NPL Site, historical operations at the IFG Site have resulted in Old GM becoming a PRP for the cleanup of the Landfill Site. The Landfill Site, approximately 55 acres in size, has been designated a Class 2 Inactive Hazardous Waste Disposal Site by NYSDEC. The Landfill Site primarily accepted municipal waste, but also accepted commercial and industrial wastes from the IFG Site. Following 1994, when USEPA listed the Onondaga Lake Site on the National Priorities List, USEPA and NYSDEC also notified the Town that the Landfill Site was being listed as a sub-site. An extensive investigation was subsequently completed at the Landfill Site, which culminated in USEPA and NYSDEC issuing a Record of Decision in March, 2007 wherein a remedial remedy was selected.

Old GM conducted various manufacturing processes at the IFG Site including plating; buffing; forming and finishing metal automobile parts; junction moldings; painting; and assembling plastic body and trim components for automobiles. The evidence collected by NYSDEC shows that Old GM's disposal practices at the IFG Site resulted in the presence of PCBs and other hazardous substances and wastes at the Landfill Site. Attached hereto as Exhibit "B" is a copy of the Preliminary Site Assessment Report prepared for the Landfill Site by NYSDEC, dated July, 1992, which includes a portion of a July, 1985 Industrial Chemical Survey and Hazardous Waste Generator questionnaire prepared by Old GM confirming the hazardous waste disposal practices at the IFG Site which resulted in the presence of hazardous wastes at the Landfill Site.

According to USEPA and NYSDEC, between 1962 and 1973, Old GM disposed PCBs and PCB-related hazardous wastes at the Landfill Site. Documented releases included approximately 640 tons of paint sludge; 22 tons of waste paint thinner and paint reducer; unknown quantities of boiler ash and buffing sludge; and approximately 30 pounds of unadulterated PCBs. Old GM further acknowledged that Leaseway Haulers,

Inc., AT&T Haulers, and Mattheison Trash Service regularly hauled waste from the IFG Site to the Landfill Site. PCBs (including Aroclor 1248) known to be present at the IFG Site, have also been detected in various media associated with the Landfill Site. This undeniable connection between the Aroclor 1248 PCBs generated at the IFG Site, and those present in the soils and groundwater at the Landfill Site, confirms that Old GM's historical waste practices at the IFG Site directly resulted in the disposal of PCBs and PCB wastes at the Landfill Site, thus supporting a finding that Old GM is a PRP with respect to the Landfill Site pursuant to Section 107(a)(3), 42 U.S.C. § 9607(a)(3) of CERCLA. There is no dispute that Old GM is a party, who by contract, agreement or otherwise, arranged for the disposal of hazardous substances at the Landfill Site. A party qualifies as a PRP on an arranger basis under CERCLA when it "takes intentional steps to dispose of a hazardous substance." *See Burlington Northern and Santa Fe Railroad Company v. United States*, 129 Sup.Ct. 1870, 1879 (2009).

The main consideration for Old GM's PRP liability is the acknowledgement that, but for the presence of PCBs and other hazardous substances generated and disposed of by Old GM, the cleanup of the Landfill Site would have been completed as a 6 N.Y.C.R.R. Part 360 municipal solid waste closure, as opposed to a Class 2 Inactive Hazardous Waste Site pursuant to 6 N.Y.C.R.R. Part 375. Because Old GM's disposal of PCBs and PCB-related waste resulted in a Class 2 listing of the Landfill Site, the associated cleanup costs are significantly higher, requiring that Old GM's allocated share of cleanup costs reflect this outcome. The Town therefore projects that Old GM's disposal of PCB-related wastes resulted in a 56% incremental increase in the total cost to be incurred in remediating the Landfill Site.

Based on its recent bid award for phase one of the cleanup, the Town has calculated that the total present worth cost of remediating the Landfill Site is $29,592,701. Old GM's estimated allocated share of these costs is, at a minimum, $19,201,701, representing the incremental costs associated with remediating the Landfill Site as a Class 2 Inactive Hazardous Waste Site due to GM's disposal of PCBs and other hazardous substances. The Settlement Agreement, in its current form, however, bars the Town from recovering any portion of this cost from Old GM despite the source of its liability being directly (and unequivocally) linked to the IFG Site. The Settlement Agreement thus fails to satisfy the applicable standard for judicial approval of CERCLA settlements, and violates that statute's objective that consent decrees, wherein the United States provides covenants not to sue, be fair, reasonable and consistent with CERCLA's goals of cleaning up contaminated sites.

What is particularly troubling about the United States' decision to bar the Lower Ley Creek sub-site and Landfill Site from compensation is its self-creation of "orphan shares," which will ultimately jeopardize the future cost recovery efforts by USEPA, NYSDEC and the Town relating to these sub-sites, as well as the Onondaga Lake NPL

Site. By agreeing to the Settlement Agreement, the United States has essentially undermined its ability to seek the recovery of millions of dollars from non-Old GM parties who also bear liabilities to these contaminated sites.

Miscellaneous Comments

In addition to the comments provided by the County on pages 10-12 of its November 24th correspondence, the Town requests that DOJ further consider the following revisions to the proposed Settlement Agreement:

1. The term "any general unsecured claim" in paragraph 100 (ii) of the Settlement Agreement should be replaced with the term "any claims." This revision ensures the broadest reservation of rights by the United States since some of the environmental claims are still ongoing and not necessarily reflected in the proof of claims filed, to date, in the Old GM bankruptcy proceeding.

2. The phrase "other than claims or causes of action for migration of Hazardous Substances emanating from a Property" in paragraph 100 (ii) must be deleted since it is inconsistent with the Settlement Agreement's reservation of rights with respect to the Lower Ley Creek and Lake Bottom sub-sites. The basis of the claims preserved in paragraph 100(ii) is that PCBs and other hazardous substances have actually migrated from the IFG Site and contaminated those sub-sites.

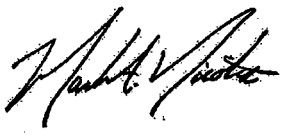
3. The second sentence on page 60 of the Settlement Agreement (with paragraph 100) must be revised so that the Settlement Agreement is also without prejudice as to any liability of Debtor's successors, assigns, officers, directors, employees, and trustees pursuant to Section 113(f) of CERCLA. The Town further objects to the Settlement Agreement's ban on future acts creating liability under CERCLA, RCRA and/or state law if based on continuing releases related to conduct prior to the Effective Date of the Settlement Agreement.

4. Consistent with comment 2 above, paragraph 105 of the Settlement Agreement must be revised by deleting the phrase "including releases of Hazardous Substances from any portion of the Properties, and all areas affected by migration of such substances emanating from the Properties...," since it undermines the reservation of rights preserved in Article VIII of the Settlement Agreement as to the Lower Ley Creek, Lake Bottom and Salina Landfill Sub-sites.

Conclusion

The arbitrary limitations that have been placed on the distribution of the Settlement Agreement's trust monies will result in a significant financial burden being placed squarely on the Town, notwithstanding the fact that Old GM's IFG Site is solely or primarily responsible for the contamination existing at the Lower Ley Creek sub-site and the Landfill Site. The environmental data collected by USEPA and NYSDEC proves there is no legitimate basis to exclude these Old GM liabilities from compensation under the Environmental Trust Fund. To do so, will not only undermine the future efforts of the United States to address these environmental concerns, but unjustly place the burden of these liabilities solely on the shoulders of Town and County residents.

Sincerely,



Mark A. Nicotra
Supervisor
Town of Salina

Attachments
cc: Town of Salina Town Board Members
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Maureen Leary, NYS Assistant Attorney General
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GORDON J. CUFFY
County Attorney

November 24, 2010

Via E-Mail and U.S. Mail

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Washington, D.C. 20044-7611

Re: *In re Motors Liquidation Corp., et al.*, D.J. Ref. 90-11-3-09754

Onondaga County, New York Comments on Proposed Consent Decree and Settlement Agreement

Dear Assistant Attorney General Moreno:

Onondaga County submits these comments to request specific changes to the proposed Consent Decree and Settlement Agreement (the "Settlement Agreement") that will result in the creation of the General Motors Bankruptcy Environmental Trust Fund.

As more fully set forth below, the proposed settlement arbitrarily prescribes that Trust monies shall be used for the remediation of Ley Creek in Onondaga County, NY only so far as the "Route 11 Bridge". If uncorrected, this arbitrary funding decision will result in both a gross inequity and a significant funding shortfall of the monies necessary to respond to decades of PCB releases by General Motors that contaminated the entirety of Ley Creek[1].

The decision to underfund the Debtors' liability for the remediation of Ley Creek is inconsistent with the underlying purposes of the Trust Fund: "to conduct, manage and/or fund Environmental Actions with respect to the Properties or migration of Hazardous Substances emanating from certain of

[1] A map of the Ley Creek Watershed, Ley Creek, the location of the GM-IFG Syracuse facility, the Route 11 Bridge and Onondaga Lake is attached.

the Properties in accordance with the provisions of this Agreement." (Proposed Environmental Response Trust Agreement, Article 2.3).

Moreover, as to Ley Creek, the proposed Settlement Agreement is in direct contravention of Congressional mandates and the underlying purposes of both the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

Onondaga County requests that the proposed Settlement Agreement be modified to include funding for the cleanup of the entirety of Ley Creek, Old Ley Creek and any and all GM-related Ley Creek PCB dredge spoil locations.

I. Background

Onondaga County, New York, is a claimant in the *Motors Liquidation Corp., et al., f/k/a General Motors Corp., et al.*, Jointly Administered Case No. 09-50026 (REG) bankruptcy. The County's proof of claim concerns General Motors' liability under the Nation's environmental laws for PCB contamination detected in the Onondaga Lake, Onondaga County, New York National Priorities List, including Ley Creek and the Ley Creek PCB Dredging Site.

For approximately 40 years -- from the 1950s through 1993 -- General Motors Corporation (GM) discharged polychlorinated biphenyls (PCBs) from its Inland Fisher Guide facility ("IFG" or "GM-IFG Syracuse") into Ley Creek. Ley Creek flows generally east to west adjacent to and past the IFG site before discharging into Onondaga Lake approximately four miles downstream.

On August 12, 1985 GM entered into a consent order with NYSDEC (Case #7-0383) to (a) address the on-going discharge to Ley Creek of GM-IFG Syracuse wastewaters contaminated with, among other pollutants, two PCB cogeners, Aroclor 1242 and Aroclor 1248; and (b) limit any such future discharges.

Following additional investigation the NYSDEC concluded: "The confirmed presence of these hazardous substances at GM's facility and the proximity of such substances and discharge of PCBs to Ley Creek establishes that the hazardous substance contamination at the GM facility represents a release or threat of release of hazardous substances to the Onondaga Lake NPL Site pursuant to 104 and 107 of CERCLA. GM's facility is a sub-site of the Onondaga Lake NPL site." *See* "Exhibit A" (NYSDEC Order on Consent, Index # D-7-0001-97-06, September 17, 1997) at paragraph 33A.

Pursuant to a series of subsequent orders entered into with NYSDEC from 1985 through 2001, GM investigated the extent of PCB contamination in what has become known as the "Ley Creek PCB Dredging Site" and executed an interim remedial measure to remove PCB-contaminated soils in the area of a County sewer line. The "Ley Creek PCB Dredging Site" is located on the south side of Ley Creek starting at the approximate eastern boundary of the IFG facility (i.e., Town Line Road) and extending west and downstream for a distance of approximately 4,300 feet or 0.814 miles. The investigation and remediation work was all conducted outside the Creek.

The 1997 NYSDEC Consent Order, which was voluntarily executed by GM, created an obligation on GM to sample Ley Creek surface water and sediment, but only downstream as far as the Route 11 Bridge. While the required scope of GM's initial 1999 Work Plan was limited to that reach of the Creek, the Consent Order established the potential that GM would be required to investigate and respond to conditions beyond the Route 11 Bridge. Specifically, Paragraph 27 of the 1997 NYSDEC Order ("Exhibit A" hereto) stated "any additional investigation found to be necessary . . . should be addressed under this Consent Order in conjunction with the Department's evaluation of the need for potential response action with respect to environmental contamination at the facility." Indeed, it was understood that the investigation would ultimately proceed beyond the Route 11 Bridge.

In December, 2000 the Town of Salina, New York submitted a Remedial Investigation report to NYSDEC for the former Town of Salina Landfill, which is located adjacent to Ley Creek downstream from GM-IFG Syracuse, the "Ley Creek PCB Dredging Site" and the Route 11 Bridge that crosses Ley Creek. The Town Landfill RI Report confirmed the presence of PCB contamination in Ley Creek sediment (Aroclor 1248 and 1260) and PCB contamination in Ley Creek surface waters (Aroclor 1248) downstream of the IFG Facility, the "Ley Creek PCB Dredging Site" and the Route 11 Bridge.

Recent sampling by the United States Environmental Protection Agency of the so-called Lower Ley Creek site (i.e., Ley Creek downstream of the Route 11 Bridge) confirmed the presence of PCBs in Lower Ley Creek and EPA's July 22, 2010 Onondaga Lake NPL Sub-site Evaluation for Lower Ley Creek states: "[T]he majority of the contamination in Lower Ley Creek sediment has come from various sources and/or facilities upstream and on Ley Creek, including the former General Motors Corporation – Inland Fisher Guide Facility." A copy is attached hereto as "Exhibit B". The evaluation does not identify any other alleged source.

Contemporaneous with the above events, the New York State Department of Environmental Conservation listed Old Ley Creek[2], which is also located downstream of the Route 11 Bridge in the State Registry of Inactive Hazardous Waste Disposal Sites, due to the presence of GM-IFG Syracuse PCB Contamination. GM's refusal to commence an investigation of Old Ley Creek was largely driven by its concern for the magnitude of the site, as defined by NYSDEC, and the detrimental impact on other pending claims. See "Exhibit C" (March 10, 2009 letter from counsel for GM to NYSDEC)

Notwithstanding New York State issued Orders enjoining GM from continuing unpermitted discharges of hazardous substances to Ley Creek and its environs and the 1997 finding that GM-IFG Syracuse was an actual or potential source of PCB contamination detected in Onondaga Lake, GM-IFG Syracuse continues to discharge PCBs to Ley Creek. GM reported that it exceeded its SPDES permit discharge limits for PCB Aroclor 1248 in March, 2007 and December, 2008. *See* "Exhibit D" (02/07/08 GM letter to NYSDEC). GM also reported that its discharges to Ley Creek exceeded 0.065 ug./l for PCB in February and March, 2008. *See* "Exhibit D" (04/10/09 GM ltr to NYSDEC). It is worth noting that these exceedances occurred from a location that is no longer operating and has not operated for years, and they strongly suggest GM-IFG Syracuse remains a pervasive source of PCBs to Ley Creek and its environs.

Recognizing the limited data currently available and the absence of a completed feasibility study, conservative preliminary estimates of the potential response cost for the Lower Ley Creek[3] site could approximate or exceed fifty million of dollars ($50,000,000).

By letter dated October 30, 2009, Onondaga County and seven other entities, including GM, were identified as potentially responsible parties with respect to what has been identified as the "Lower Ley Creek" site and asked to fund a Remedial Investigation/Feasibility Study for Lower Ley Creek. Such a request is historically a precursor to a section 106 cleanup order, pursuant to 42 U.S.C. § 9606, to respond to the release or threat of a release that is

[2] Until the 1970s, "Old Ley Creek" was the original Ley Creek channel immediately downstream of Route 11. It was cut off from the original channel as a result of flood control dredging.

[3] While EPA appears to define Lower Ley Creek as the existing main channel of Ley Creek west and downstream of the Route 11 Bridge to the point of discharge into Onondaga Lake, for the purposes of these comments Onondaga County submits Lower Ley Creek should include the existing channel from Route 11 to Onondaga Lake, Old Ley Creek (an historic artifact that documents the historic levels of GM-IFG Syracuse PCB contamination in Ley Creek prior to historic flood control dredging), and any PCB dredge disposal areas located west and downstream of the Route 11 Bridge and/or otherwise not the "Ley Creek PCB Dredging Site" located immediately downstream of GM-IFG Syracuse.

impacting Lower Ley Creek and/or a subsequent government cost recovery action should the government fund a response.

II. The Proposed Consent Decree and Settlement Agreement

The proposed Consent Decree and Settlement Agreement are intended to address and resolve the Debtors' liabilities and obligations for environmental matters under CERCLA, RCRA and analogous state statutes. *See generally*, Notice of Lodging of Proposed Settlement Agreement, October 20, 2010, Exhibit 1 (Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, The Environmental Response Trust Administrative Trustee, The United States *et al)* ("Settlement Agreement").

Specifically, with respect to the County's objections and comments, the proposed Settlement Agreement would allocate a total of $33,004,154 to the proposed G.M. Bankruptcy Environmental Trust Fund to address CERCLA and RCRA liability for "GM-IFG Syracuse" and the "Ley Creek PCB Dredging Site", assigned respectively MLC Site ID 1010 and 1110. (*See* Settlement Agreement, Attachment A). That sum is further allocated between Minimum Response Cost, Reserve Response Costs and Post Cleanup Operations and Maintenance Costs, as such terms are defined in the draft agreements. (*See generally* Settlement Agreement).

The GM-IFG Syracuse site is allocated $31,121,812 of the combined $33 million. Of that, $22,573,341 is allocated "for remediation within the IFG Syracuse facility property boundaries and $8,548,471 [is allocated for] the property extending from the facility property boundaries to the Route 11 Bridge." (*See* Settlement Agreement, ¶63).

While the Settlement Document defines the term "Environmental Action" to encompass remediation, the term "Remediation" is not a defined term; nor is there a breakdown provided for Minimum Response Cost, Reserve Response Costs and Post Cleanup Operations and Maintenance Costs as such terms might apply to that portion of the GM-IFG Site described as "within the IFG Syracuse facility property boundaries" or that portion described as "the property extending from the facility property boundaries to the Route 11 Bridge".

The remaining $1,882,342 is designated for the Ley Creek PCB Dredging Site, which, as noted earlier, is located upstream of Route 11. Of that, 74% or $1,393,361 is allocated for Post Cleanup Operations and Maintenance Costs. As the County reads the proposed Settlement Agreement and Trust document, none of those monies would be available for use with respect to any "off-site" contamination (i.e., Lower Ley Creek).

As detailed below the proposed settlement in its current form fails to satisfy the applicable standard for judicial approval of CERCLA settlements.

III. With Respect to GM-IFG Syracuse and Ley Creek and Its Environs, The Proposed Settlement Agreement is Not Fair, It is Not Reasonable and It is Not Faithful to the Objectives of CERCLA and RCRA

Pursuant to 42 U.S.C. § 6973,

> "Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. "

A review of this proposed Consent Decree and Settlement Agreement must determine "if it is fair, reasonable, and faithful to the objectives of CERCLA" and RCRA. *See United States v. General Electric Company*, 460 F. Supp.2d 395, 401 (N.D.N.Y. 2006)(quotations and citations omitted).

A prime objective of CERCLA is "to impose liability on responsible parties." *Id.* The fairness inquiry concerns both procedural and substantive fairness; the reasonableness inquiry addresses both technical considerations and such matters as "whether a settlement that does not fully compensate for costs is nonetheless a cost-effective alternative to litigation that will conserve public and private resources." *Id.*

Onondaga County submits that with respect to GM-IFG Syracuse and Ley Creek[4] and its environs the proposed Consent Decree and Settlement Agreement is neither fair - procedurally or substantively, reasonable or supportive of one of the prime objectives of RCRA of CERCLA, namely, assuring that the settlement will in fact further an appropriate remediation of the impacted site.

A. The Artificial and Arbitrary Site Boundary

In relevant part, CERCLA defines the term "facility" to mean "any site or area where a hazardous substance has been deposited, stored, disposed of, or

[4] See footnote 2.

placed or otherwise come to be located". 42 U.S.C. § 9601(9). The evidence here is undisputed that PCBs were released (and continue to be released) into Ley Creek from GM-IFG Syracuse and they are transported the length of Ley Creek to its point of discharge into Onondaga Lake. Thus, by definition, the Site is the entirety of Ley Creek including the current and historic portions located downstream of Route 11.

Despite that undisputed and irrefutable reality, the proposed Settlement Agreement allocates monies to remediate only "the property extending from the facility property boundaries to the Route 11 Bridge."[5] No monies have been made available to address Lower Ley Creek, which given the response to date at the Ley Creek PCB Dredging Site is today likely the more critical environmental concern. To the contrary, the proposed Settlement Agreement arguably precludes the use of federal settlement funds for Lower Ley Creek while threatening to leave impecunious PRPs liable to fund GM's cleanup.

Ley Creek flows an additional two (plus or minus) miles from the Route 11 Bridge to its point of discharge into Onondaga Lake. Just as the Creek does not stop at the Route 11 Bridge neither did the PCB contamination from GM-IFG Syracuse stop at the Route 11 Bridge. As noted above, sampling results confirm the presence of PCB contamination downstream of the Route 11 Bridge in Ley Creek, Old Ley Creek and in the Ley Creek PCB dredging sites located downstream of the Route 11 Bridge. There is no rational basis to limit the cleanup to that portion of Ley Creek upstream of the Route 11 Bridge.

The decision to fund only a portion of the Ley Creek discharge is in conflict with both (1) the Government's public statements lauding the settlement (i.e., "This settlement holds accountable those responsible for contaminating certain properties and ensures they help transform those communities by supporting the necessary cleanup." Statement of Acting Deputy Attorney General Grindler; Department of Justice Press Release, October 20, 2010) and (2) the stated objective found in the text of the proposed Trust Agreement (i.e., "to conduct, manage and/or fund Environmental Actions with respect to the Properties or migration of Hazardous Substances emanating from certain of the Properties in accordance with the provisions of this Agreement"). (*See* Proposed Environmental Response Trust Agreement, Article 2.3).

It simply cannot be said that a decision to fund half a cleanup of the off-site GM-IFG Syracuse facility PCB contamination "holds accountable those

[5] To be frank, Onondaga County cannot decipher from the draft Settlement Agreement what precisely is meant by the ambiguous phrase "the property extending from the facility property boundaries to the Route 11 Bridge." It is not known if monies are, in fact, proposed to be available to address in-Creek PCB contamination upstream of the Route 11 Bridge. That contamination has recently been confirmed and must be included among any Environmental Actions intended for this site.

responsible for contaminat[ion] by ensuring they engage in" the necessary cleanup. The proposed settlement does not even offer to conduct the necessary cleanup of property located downstream of the arbitrary Route 11 cutoff point.

This circumstance is best explained by the Conference Report on the Hazardous and Solid Waste Amendments of 1984, 98 STAT. 3221:

> SECTION 207-- CORRECTIVE ACTION BEYOND FACILITY BOUNDARIES; UNDERGROUND TANKS
>
> ***14** HOUSE BILL.-- THE HOUSE BILL DIRECTS THE ADMINISTRATOR TO AMEND THE STANDARDS UNDER SECTION 3004 TO REQUIRE THAT CORRECTIVE ACTION BE TAKEN BEYOND THE FACILITY BOUNDARY WHERE NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT. SUCH REQUIREMENT WOULD NOT BE APPLICABLE WHERE THE OWNER OR OPERATOR OF THE FACILITY CONCERNED DEMONSTRATES TO THE SATISFACTION OF THE ADMINISTRATOR THAT, DESPITE THE BEST EFFORTS OF THE OWNER OR OPERATOR, PERMISSION TO UNDERTAKE SUCH ACTIONS COULD NOT BE OBTAINED.
> SENATE AMENDMENT. -- THE SENATE AMENDMENT DOES NOT CONTAIN A SIMILAR PROVISION.
> CONFERENCE SUBSTITUTE. -- THE CONFERENCE SUBSTITUTE ADOPTS THE HOUSE PROVISION. THIS PROVISION OVERTURNS A POLICY OF THE ENVIRONMENTAL PROTECTION AGENCY WHICH LIMITED THE SCOPE OF CORRECTIVE ACTION TO THE PROPERTY OF THE POLLUTING FACILITY. SINCE MOST FORMS OF POLLUTION, PARTICULARLY GROUNDWATER CONTAMINATION, DO NOT OBSERVE TERRITORIAL OR PROPERTY BOUNDARIES, *SUCH A RESTRICTION HAS NO BASIS IN LOGIC.* THE PROVISION THEREFORE REQUIRES EPA TO AMEND THE APPLICATION REGULATION TO ASSURE THAT CORRECTIVE ACTION BEYOND A FACILITY BOUNDARY WILL BE REQUIRED WHERE APPROPRIATE.

H.R. CONF. REP. 98-1133, H.R. Conf. Rep. No. 1133, 98TH Cong., 2nd Sess. 1984, 1984 U.S.C.C.A.N. 5649, 1984 WL 37531 (Leg. Hist.)(emphasis added).

Indeed, the artificial site boundary found in the proposed Settlement Agreement *has no basis in logic* and no support under the law. Thus, the

settlement approach proposed here is the very approach that was explicitly identified and rejected by Congress in its repudiation of a prior Government policy and its 1984 direction to EPA on how it must proceed in the future.

B. The Arbitrary Use of Federal Monies

More troubling to Onondaga County is the reality that while the vast majority of the $600,000,000 in funding for the Environmental Trust is recycled federal dollars, and the sole beneficiary of the Trust will be the United States, (*See* Settlement Agreement, ¶38), EPA is concurrently pursuing Onondaga County (and 6 others) as potentially responsible for addressing the Lower Ley Creek GM-IFG PCB contamination in furtherance of a concerted strategy to protect the considerable federal holdings in the Debtors. Insofar as the available information and data identifies the Debtors as the parties that are overwhelmingly, if not 100%, responsible for the PCB related contamination driving the need for a response, the proposed Settlement Agreement leaves significant environmental contamination potentially unaddressed.

When GM and its subsidiaries filed for bankruptcy protection in June of 2009, the federal government provided debtor-in-possession funding to Motors Liquidation Corp (i.e., Old GM), ultimately as much as $1.75 billion, plus an additional $19.4 billion to preserve GM's viability as a going concern pending conclusion of this bankruptcy proceeding[6].

At the same time that one hand of the Government was funding GM, the other hand of the Government, in the name of the United States Environmental Protection Agency, is seeking to hold non-GM parties liable for GM-IFG Syracuse PCB releases.

The EPA has requested that Onondaga County (and the other named PRPs) conduct a more detailed study of the Lower Ley Creek GM-IFG PCB contamination as a precursor to the selection of a Lower Ley Creek remedy. The County fully anticipates that in the future EPA will potentially issue a 106 order to the County (and other PRPs) or ultimately, seek cost recovery for any past or future EPA response costs from the County (and other PRPs).[7]

[6] The scale of the United States' involvement in managing GM through the bankruptcy proceeding is detailed at Sections II (B) and II(C) of Debtors' proposed Disclosure Statement filed with this Court on or about August 31, 2010.

[7] Neither Onondaga County nor any of the other PRPs have been found liable for any response costs and the submission of these comments in no way acts as a waiver of any defenses - factual or legal - that the County may have in the face of EPA's allegation that the County is a PRP for this site. It is possible that the County and/or others may be found liable, and it is possible that given the GM bankruptcy and the terms of this proposed Settlement Agreement, the Lower Ley Creek Site will be a true orphan site with no other existing or viable PRPs other than the federal or state governments.

Meanwhile, the proposed Settlement Agreement allocates what is likely only a fraction of the monies that actually will be required to remediate Debtors' legacy of contamination throughout Ley Creek and its environs.

To the extent the proposed Settlement Agreement is intended to promote community economic revitalization and growth and the return of properties to the tax rolls, the result in Onondaga County will be the complete opposite. If the Settlement Agreement is approved in its current form, local citizens and taxpayers may be forced to fund the response costs for years of GM contamination and/or may be compelled to devote significant resources to achieve vindication and/or a fair and equitable apportionment.

Moreover, structuring a settlement that arbitrarily cuts off the sole or primary polluter's liability at an artificial site boundary and thereby creates a likely 95% or more orphan share with respect to Lower Ley Creek is a virtual guarantee of protracted future litigation resulting in the expenditure of limited financial and judicial resources in contravention of the goals of CERCLA. *See e.g. United States v. Grand Rapids*, 166 F. Supp.2d 1213, 1218 (W.D. MI 2000). The County submits that, with respect to GM-IFG Syracuse, this proposed settlement is not a cost-effective alternative to the likely litigation between and among primarily units of government regarding the allocation of the Government-induced GM orphan share of response cost likely totaling tens of millions of dollars.

In *United States v. SEPTA*, 235 F.3d 817 (3d Cir. 2000) the Third Circuit noted that: "A court should approve a consent decree if it is fair, reasonable, and consistent with CERCLA's goals." SEPTA, 235 F.3d at 823. The element of: "fairness requires that settlement negotiations take place at arm's length. A court should 'look to the negotiation process and attempt to gauge its candor, openness and bargaining balance.'" *Accord In re: Tutu Water Wells CERCLA Litigation,* 326 F.3d 201, 207 (3d Cir. 2003). A proposed settlement negotiated by a lender controlled Debtor that by its expressed terms is intended to solely benefit the lender, that has as a potential purpose and/or impact of shifting remedial costs to entities such as the County who have been named as potentially responsible parties without fully assessing the adequacy of the settlement in achieving CERCLA's remedial objectives, fails to meet the well recognized fairness standard for judicial approval. *United States v. Cannons Eng'g Corp.*, 899 F.2d. 79, 84 (1st Cir.1990).

IV. Additional Comments

- The GM-IFG Site as described in ¶63 of the Settlement Agreement includes both the area "within the IFG Syracuse facility property boundaries" and "the property extending from the facility property boundaries to the Route 11 Bridge". The phrase "the property extending

from the facility property boundaries to the Route 11 Bridge" is at best ambiguous. It must be defined more precisely and the scope of the work intended to be funded by the Trust should be described. To the extent that work does not include both in and out of Creek response actions, the scope should be amended to include all such required activities and if necessary, the cost estimate and Trust funding should be modified accordingly.

- Paragraph 94 of the Settlement Agreement concerning Covenants Not to Sue proposes that the covenants relate to potential claims or causes of action against the Environmental Trust "under CERCLA, RCRA, and State environmental statutes, as well as any other environmental liabilities asserted in the Government Proofs of Claim." The phrasing of the covenant is at best ambiguous and suggests an agreement not to pursue claims or causes of action that may arise after the Trust is funded (e.g., current or future on-going permit violations). The language should be amended to narrow the scope of the proposed covenants such that future enforcement of post-funding environmental violations is not precluded.

- Paragraph 99 of the Settlement Agreement sets forth the Debtors and the Trusts' proposed covenant not to sue the United States or states for potential CERCLA or RCRA claims. Given that proposed covenant, what steps were taken and to what extent was any allocation of United States or state liabilities used to derive the funding proposed to be provided to the Trust for any individual site?

- Paragraph 100 (ii) of the Settlement Agreement carves out an exception to the Covenants Not to Sue for Lower Ley Creek that is defined as "the entire portion of Ley Creek which is downstream from the Route 11 Bridge." That phrasing is much too ambiguous and uncertain. It should be modified to read as follows: "the existing channel from Route 11 to Onondaga Lake, Old Ley Creek and any PCB dredge disposal areas located west and downstream of the Route 11 Bridge and/or otherwise not the "Ley Creek PCB Dredging Site" located immediately downstream of GM-IFG Syracuse.

- Paragraph 100 (iv) of the Settlement Agreement carves out an exception to the Covenants Not to Sue for future acts that create liability buts creates an exception to the carve out for "continuing releases related to the Debtor's conduct prior to the Effective Date." The exception to the exception should not apply to on-going permit violations whether or not they can in any way be related back to pre-Effective Date conduct. In this case, the latest publicly available information indicates on-going PCB

discharges in violation of applicable SPDES permit limits; that conduct should not be exempted.

- Paragraphs 100 and/or 105 of the settlement Agreement should confirm that "covered matters" does not include violations of the Clean Water Act or any state analogs to the Clean Water Act.

IV. Request for a Public Hearing

Given the decision to artificially limit funding to areas at or upstream of the Route 11 Bridge, pursuant to section 7003 of RCRA, 42 U.S. C. 6973(d), Onondaga County requests that the Department of Justice hold a public meeting and receive public comments in Onondaga County, New York prior to any decision to finalize the proposed Consent Decree and Settlement Agreement.

Respectfully submitted,

GORDON J. CUFFY
County Attorney

GJC/nlm
Enclosures

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
In Re:

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

Debtors.

Case No. 09-50026 (REG)
Chapter 11
(Jointly Administered)

CERTIFICATE OF SERVICE

I, Kelly C. Collins of Harris Beach PLLC, hereby certify that on the 11th day of February, 2011, this office electronically filed the Objection of Town of Salina to Amended Joint Chapter 11 Plan Proposed By Motors Liquidation Company, f/k/a General Motors Corp., in the above-referenced matter, with the Clerk of the Bankruptcy Court using the CM/ECF system, which sent notification to the CM/ECF participants.

I further hereby certify that on February 10, 2011, I caused service of the above-referenced document by overnight mail, via Federal Express priority overnight delivery, postage paid official depository (to be delivered on or before February 11, 2011 at 4:00 p.m.) on the following parties:

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Executed on February 11, 2011

/s/Kelly C. Collins
Kelly C. Collins