

**Hearing date and time: June 26, 2013, 9:45 a.m.**  
**Objection deadline: June 21, 2013**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case No.
	:	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:	09-50026 (REG)
f/k/a General Motors Corp., <i>et al.</i>	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
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**JOINT MOTION OF THE UNITED STATES OF AMERICA AND THE STATE OF  
NEW YORK FOR AN ORDER APPROVING  
THE CONSENT DECREE AND SETTLEMENT AGREEMENT REGARDING  
NATURAL RESOURCE DAMAGE CLAIMS BETWEEN  
THE GENERAL UNSECURED CREDITORS' TRUST, THE UNITED STATES OF  
AMERICA, AND THE STATE OF NEW YORK**

**PRELIMINARY STATEMENT**

The United States of America, on behalf of the United States Department of the Interior (“**DOI**” or the “**Settling Federal Agency**”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, hereby moves this Court, jointly with the State of New York as co-trustee for natural resources, for an order approving under applicable environmental laws the consent decree (the “**NRD Consent Decree**”) by and among the United

States, the State of New York (collectively, “**Settling Trustee Parties**”), and the General Unsecured Creditors’ (“**GUC**”) Trust, the successor to debtor Motors Liquidation Company (f/k/a General Motors Corporation, hereafter, “**MLC**”), its affiliated debtors, and its successors, as debtors (collectively, the “**Debtors**”). The NRD Consent Decree with April 8, 2013 notice of lodging in this Court is annexed as Exhibit 1 hereto, and a proposed order granting the requested relief is annexed as Exhibit 2 hereto.

As explained below, no Rule 9019 motion is required for this \$5.5 million settlement agreement because previous Court orders authorize the GUC Trust to enter settlement agreements that are for amounts less than \$50 million without obtaining the Court’s approval under Bankruptcy Rule 9019. The Court’s approval is required, however, under federal environmental laws. Such approval is warranted here.

Under the NRD Consent Decree, the Settling Trustee Parties will be granted allowed natural resource damages (“**NRD**”) claims in the total amount of \$5,500,000 (“**Onondaga NRD Allowed Claim**”). However, through assertion of a defense in separate tax refund litigation brought against the United States by the “New” General Motors Company (the so-called “New” GM) to which no Debtor or successor is a party, the United States has secured authorization to apply \$1,232,323 held by the United States that would otherwise be due to New GM to partially satisfy amounts owed to the United States as a result of the claims being settled through the NRD Consent Decree. The NRD Consent Decree credits this amount against the allowed claim amount, such that, for distribution purposes, the Settling Trustee Parties will be allowed a general unsecured claim in the combined total amount of \$4,267,677, and will receive distributions pursuant to the confirmed Plan of Liquidation based on that amount.

As required by the environmental laws, notice of the proposed NRD Consent Decree was published in the Federal Register, and the public comment period has expired. *See 78 Fed. Reg.* 22295-96 (Apr. 15, 2013). The United States received no comments concerning the proposed NRD Consent Decree, and believes that the settlement is fair, reasonable, and in the public interest. The United States therefore requests that the Court approve the NRD Consent Decree.

The function of the Court in reviewing such motions is not to substitute its judgment for that of the parties to the proposed Agreement, but to confirm that the terms of the proposed Agreement are “fair and adequate and are not unlawful, unreasonable, or against public policy.” *United States v. Hooker Chem. & Plastics Corp.*, 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982), *aff’d*, 749 F.2d 968 (2d Cir. 1984). The Court should also confirm that the proposed Settlement Agreement is consistent with CERCLA’s goals. *See United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991). Finally, in conducting its review, the Court should be deferential to the United States’ determination that the settlement is in the public interest. *See United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990). Accordingly, for the reasons set forth herein, the United States respectfully requests that this Court approve and enter the proposed NRD Consent Decree lodged with this Court on April 8, 2013.

## **I. GENERAL STATUTORY/FACTUAL BACKGROUND**

### **A. Statutory Background**

Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675, to provide a framework for cleanup of the nation’s worst hazardous waste sites. The primary goal of CERCLA is to protect and preserve public health and the environment from the effects of releases or threatened releases of hazardous substances to the environment. *See Voluntary Purchasing Groups, Inc. v. Reilly*, 889

F.2d 1380, 1386 (5th Cir. 1989); *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d 1074, 1081 (1st Cir. 1986); *New York v. Shore Realty Corp.*, 759 F.2d 1032, 1040, n.7 (2d Cir. 1985).

Section 107(f) of CERCLA, 42 U.S.C. § 9607(f)(2), provides for the designation of governmental trustees who may assert claims for **NRD** on behalf of the public, seeking recovery of assessment and restoration costs necessitated by releases of hazardous substances. DOI is the relevant federal natural resource trustee for the site covered under the proposed NRD Consent Decree; the State of New York is a joint trustee along with DOI at the site at issue.<sup>1</sup> Under CERCLA section 107(f), potentially responsible parties (“**PRPs**”) are liable for natural resource damages and assessment costs incurred and to be incurred by natural resource trustees where such damages and/or costs are caused by the PRP’s release of hazardous substances to the environment.

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), permits the Federal and State Trustees to recover natural resource damages, including assessment and restoration costs, from PRPs. Pursuant to Section 107(a), PRPs include the owners and operators of Superfund sites at the time of the disposal of hazardous substances at the sites, the current owners and operators of Superfund sites, as well as the generators and transporters of hazardous substances sent to Superfund sites. *See United States v. Alcan Aluminum Corp.*, 990 F.2d 711, 722 (2d Cir. 1993); *O’Neil*, 883 F.2d at 178; *United States v. Monsanto*, 858 F.2d 160, 168-171 (4th Cir. 1988). Section 107(a) of CERCLA creates strict, joint and several liability where environmental harm is

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<sup>1</sup> The Onondaga Nation is also a joint trustee at the site at issue, but previously withdrew its only proof of claim and is not, and need not be, a party to this settlement agreement or motion.

indivisible. *See Alcan Aluminum Corp.*, 990 F.2d at 722. The United States and the State of New York asserted claims against Debtors under this provision and/or analogous state laws.

Having created the liability system and enforcement tools to allow the United States to pursue responsible parties for Superfund cleanups, Congress expressed a strong preference that the United States settle with responsible parties in order to avoid spending resources on litigation rather than on cleanup. *See* 42 U.S.C. § 9622(a).<sup>2</sup> CERCLA encourages settlements by, *inter alia*, providing parties who settle with the United States protection from contribution claims for matters addressed in the settlement. *See* 42 U.S.C. § 9613(f)(2). This provision provides settling parties with a measure of finality in return for their willingness to settle.<sup>3</sup>

**B. Overview of NRD Claims at Issue; the Parties' Settlement Negotiations, Drafting and Lodging of the Consent Decree; and Public Notice and Comment Period (During Which No Comments Were Received)**

The United States filed a timely claim (Claim No. 64064, superseded by a second federal proof of claim (Claim No. 71118)) that presented numerous federal environmental claims, and included NRD claims for restoration and/or assessment costs at six sites. NRD claims at five of these six sites were resolved by a previous settlement (ECF No. 10453). The instant Consent

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<sup>2</sup> *See also United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1184 (3d Cir. 1994); *United States v. Akzo Coatings of America, Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991); *In re Cuyahoga Equipment Corporation*, 980 F.2d 110 (2d Cir. 1992) (citing *City of New York v. Exxon Corp.*, 697 F. Supp. 677, 693 (S.D.N.Y. 1988)); *United States v. Cannons Engineering Corp.*, 899 F.2d 79, 92 (1st Cir. 1990); *United States v. DiBiase*, 45 F.3d 541, 545-46 (1st Cir. 1995); H.R. Rep. No. 253, pt. 1, 99th Cong., 1st Sess. 80 (1985), *reprinted in* 1986 U.S. Code Cong. & Ad. News 2862.

<sup>3</sup> *Cannons Engineering*, 899 F.2d at 92; *O'Neil v. Picillo*, 883 F.2d 176, 178-79 (1st Cir. 1989); *United Technologies Corp. v. Browning-Ferris Industries, Inc.*, 33 F.3d 96 (1st Cir. 1994); H.R. Rep. No. 253, pt. 1, 99th Cong., 1st Sess. 80 (1985), *reprinted in* 1986 U.S. Code Cong. & Ad. News 2862.

Decree resolves NRD claims at the one remaining unresolved site. The claims seeking restoration for natural resource damages are joint with the State of New York as co-trustee, which also timely filed an NRD claim (Claim No. 50636). The Trustees also sought reimbursement for their past costs of natural resource damage assessment (“**NRDA**”).

All parties to the NRD Consent Decree engaged in intensive, arms’-length negotiations concerning the NRD claims at issue, assisted by experts in natural resource damage issues. The parties reviewed and debated the significance of, among other things, available technical data and environmental and biological studies at the relevant sites, as well as other relevant literature and studies that shed light on issues raised at the site. Negotiations involved repeated in-person meetings and many telephone conferences spanning more than one year. Ultimately, the parties concluded that the negotiated resolution represented a reasonable compromise of the parties’ respective positions and the asserted strengths and weaknesses of the NRD claims at the site. The parties then negotiated the precise wording of the NRD Consent Decree document itself.

On April 8, 2013, the United States lodged the NRD Consent Decree with this Court (Dkt. No. 12382, copy annexed hereto as **Exhibit “1”**) and the proposed settlement was subject to a 30-day public comment period following the April 15, 2013 publication of notice of the Settlement Agreement in the *Federal Register*. See 78 Fed. Reg. 22295-96 (Apr. 15, 2013). The public comment period concluded on May 15, 2013. No comments were received.

### **C. Terms of the NRD Consent Decree**

Under the NRD Consent Decree, the United States and New York State will receive what would be a General Unsecured Claim in the total amount of \$5.5 million in satisfaction of MLC’s NRD obligations at the Onondaga Lake NPL Site (“**Settled NRD Site**”); however, as explained *supra* at 2, through separate litigation against non-Debtor party New GM, the United

States has obtained a right to offset \$1,232,323 that the United States otherwise would owe to New GM to partially satisfy the amounts that give rise to the NRD Consent Decree here. Accordingly, the NRD Consent Decree recognizes this recovery as reducing the total amount owed as a general unsecured claim on account of the settlement to \$4,267,677 (\$5.5 million less the \$1,232,323 offset recovery). Of this amount, New York State is to receive a general unsecured claim distribution based on an allowed claim amount of \$10,000 on account of the State's past costs at the site; the remaining \$4,257,677 is allowed for distribution purposes to the United States as a general unsecured claim with distributions to be credited to a joint NRDAR account administered by DOI to fund restoration activities at the site. Of the United States' offset recovery, \$85,000 will compensate DOI for its past costs at the site, and the remainder will be credited to a specified NRDAR account to be used, along with the distributions on account of the settlement's \$4,257,677 unsecured claim component, to fund restoration activities at the site.

In the NRD Consent Decree, the Settling Trustee Parties covenant not to sue Debtors with respect to NRD claims ("**Settled NRD claims**") at the Settled NRD Site, and the Settling Trustee Parties' proofs of claim with respect to the NRD at the Settled NRD Site will be deemed satisfied upon completion of distributions on account of the allowed claims. The Settling Trustee Parties reserve all other claims against the GUC Trust other than with respect to the settled NRD claims. The GUC Trust covenants not to sue the Settling Trustee Parties concerning the NRD claims at the Settled NRD Site. Further, the NRD Consent Decree affords contribution protection pursuant to 42 U.S.C. § 9613(f)(2). *See* NRD Consent Decree ¶¶ 21, 22.

Additional specific provisions of the NRD Consent Decree are as follows. For claims register purposes only, because the Settling Trustee Parties jointly administer the restoration funds being recovered and both the United States and the State of New York asserted claims for

this joint purpose, the Onondaga NRD Allowed Claim shall be reflected as a \$2,787,500 allowed claim for the United States on behalf of DOI, and a \$2,712,500 allowed claim for the State of New York on behalf of the New York Department of Environmental Conservation (“DEC”). These amounts differ solely because the United States’ past costs at the site exceed those of the State of New York by \$75,000. Distributions, however, will be made as described in the above paragraph of this motion (and in the consent decree itself, whose terms govern in the event of any conflict with the summary contained in this motion). Distributions other than on account of DOI’s and the State of New York’s past costs will go to a specified DOI NRDAR account that will be jointly managed by the Joint Onondaga Trustees (the Department of Interior, New York State, and the Onondaga Nation), and the funds and interest earned thereon will be used for restoration activities at or in connection with the Settled NRD Site as directed by the Joint Onondaga Trustees. The United States continues to reserve any additional right of offset that is or becomes available pursuant to § 5.7 of Debtors’ Plan of Liquidation. DOI and the State of New York need only credit the amounts actually received on account of this settlement to the Settled Onondaga NRD Site account, and any resulting reduction in the liability of any non-settling potentially responsible party is limited to the amount actually received on account of the claim, and not to the full allowed claim amount if that amount exceeds the amount received.

Simultaneous with the initial distribution on account of the Onondaga NRD Allowed Claim, the GUC Trust is authorized to eliminate the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Plan for remaining unresolved general unsecured claims asserted in the United States’ and the State of New York’s proofs of claim. The NRD Consent Decree by its terms is to be effective upon approval by the Court.



**D. Status of United States Environmental Claims Against and Settlements With Debtors**

The NRD Consent Decree settles the last outstanding unsecured environmental claim asserted by the United States against Debtors in proof of claim No. 64064 or the superseding claim No. 71118. The other monetary claims asserted against Debtors in those proofs of claim have been previously settled.

**II. ARGUMENT**

**THE COURT SHOULD APPROVE THE NRD CONSENT DECREE**

**A. Statement of Relief Requested**

The United States, jointly with the State of New York (the other Settling Trustee Party), moves for approval under the environmental laws of the NRD Consent Decree.

**B. Jurisdiction**

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**C. The Relief Requested Should Be Approved by the Court**

The GUC Trust, at the time the NRD Consent Decree was executed, had authority to enter into settlements where, as in here, the total settlement amount is less than or equal to \$50 million. *See* Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) Authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims (ECF No. 4180) (the “**Settlement Procedures Order**”) (authorizing pre-Effective Date Debtors to settle claims for less than \$50 million upon notice to and non-objection by the Unsecured Creditors’ Committee); Confirmation Order ¶ 31

(ECF No. 9941) (eliminating requirement for notice to and non-objection by Unsecured Creditors' Committee). A consent decree and settlement agreement negotiated by the United States to protect the public interest, however, is subject to judicial review under federal environmental laws.

Under the environmental laws, approval of a settlement agreement is a judicial act committed to the informed discretion of the Court. *See In re Cuyahoga*, 908 F.2d at 118; *Cannons Eng'g*, 720 F. Supp. at 1035. Judicial review of a settlement negotiated by the United States to protect the public interest is subject to special deference; the Court should not engage in "second-guessing the Executive Branch." *Cannons Eng'g*, 899 F.2d at 84; *see In re Cuyahoga*, 980 F.2d at 118 (noting the "usual deference given" to the government environmental agency (there, the Environmental Protection Agency); *New York v. Solvent Chem. Corp.*, 984 F. Supp. 160, 165 (W.D.N.Y. 1997) ("This Court recognizes that its function in reviewing consent decrees apportioning CERCLA liability is not to substitute its judgment for that of the parties to the decree but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy." (internal quotation marks omitted)). An evidentiary hearing is not required in order to evaluate a proposed CERCLA consent decree because such hearings would frustrate the statutory goal of expeditious settlement; hearing requests are therefore routinely and properly denied. *See United States v. Charles George Trucking Inc.*, 34 F.3d 1081, 1085 (1st Cir. 1994); *Cannons Eng'g*, 899 F.2d at 94. This "limited standard of review reflects a clear policy in favor of settlements." *Solvent Chem. Corp.*, 984 F. Supp. at 165.

As discussed below, the Court should approve the NRD Consent Decree because it is fair, reasonable, in the public interest, and furthers the goals of CERCLA. *See Charles George Trucking*, 34 F.3d at 1084; *Cannons Eng'g*, 899 F.2d at 85; *Solvent Chem. Corp.*, 984 F. Supp. at

166; *Hooker Chem.* 540 F. Supp. at 1073 (“the task has been to examine the proposal and determine whether it is a fair and adequate settlement and whether its implementation will reflect concern for the problems for which Congress has enacted the various environmental statutes.”).

The merit of this application is highlighted by the fact that no one has commented on (much less objected to) the proposed NRD Consent Decree during a 30-day public notice and comment period, despite its having been published in the Federal Register and also having been publicly docketed since April 8, 2013 in a highly visible bankruptcy that is followed widely in the environmental and bankruptcy bar.

**1. The NRD Consent Decree Is Fair**

The fairness criterion of a CERCLA settlement integrates both procedural fairness and substantive fairness. *Cannons Eng’g*, 899 F.2d at 86-88. To measure procedural fairness, the Court “should ordinarily look to the negotiation process and gauge its candor, openness, and bargaining balance.” *Id.* at 86. The proposed NRD Consent Decree is procedurally fair because it was negotiated at arm’s length over more than one year, with good faith participation by governmental actors and parties who were represented by experienced counsel, and with the assistance of technical experts on matters such as estimating the extent and cause of ecological and associated harms and the cost of future restoration activities. *See id.* at 87 (finding a CERCLA settlement procedurally fair based on criteria including an arms-length negotiation, experienced counsel, and good faith participation by settling agency).

To measure “substantive” fairness, the Court considers whether the settlement is “based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability . . . according to rational (if necessarily imprecise) estimates of how much harm each PRP has done.” *Id.* at 87; *see also United States v. Davis*, 261 F.3d 1, 24 (1st Cir. 2001);

*Charles George Trucking*, 34 F.3d at 1087; *DiBiase*, 45 F.3d at 544-45. The proposed NRD Consent Decree is substantively fair because the amount of the allowed claim for the site at issue was determined by considering actual assessment costs, the parties' best estimates of ecological and associated harms and resulting restoration needs and costs, and Debtors' estimated percentage allocation or fair share of liability for each site. Often, these estimates were determined after extensive discussions with environmental experts and/or agency technical personnel responsible for the sites. The amount of the allowed claim for each site therefore represents a substantively fair resolution of the Debtors' liabilities taking into account the uncertainties and litigation risks involved.

**2. The NRD Consent Decree Is Reasonable**

Courts evaluating the reasonableness of CERCLA settlements have considered three factors: (i) technical adequacy of the work to be performed; (ii) satisfactory compensation to the public; and (iii) the risks, costs, and delays inherent in litigation. *See Charles George Trucking*, 34 F.3d at 1085; *Cannons*, 899 F.2d at 89-90; *see also United States v. Montrose Chemical Co.*, 50 F.3d 741, 746 (9th Cir. 1996) (Court evaluates whether CERCLA settlement is fair, reasonable, and consistent with CERCLA).

Although the first prong of the reasonableness inquiry is not at issue in this settlement, as the claims derive from past assessment costs as well as anticipated restoration work that will not be performed by the GUC Trust, the NRD Consent Decree satisfies the other, necessarily intertwined, considerations relevant to reasonableness. As discussed above, the United States and the other Settling Trustee Party will receive Allowed General Unsecured Claims for NRD totaling \$5.5 million, a portion of which will be recovered in full by the United States' application of a \$1,232,323 offset recovery, with the remaining \$4,267,677 receiving

distributions pursuant to the confirmed Plan of Liquidation as an allowed general unsecured claim. This total recovery will both compensate the State of New York and the United States for their past costs at the site (totaling \$95,000), and fund natural resource restoration activities at the site.

These settlement terms compensate the public and further the goals of CERCLA's natural resource damage provision. *See* CERCLA § 107(a), (f), 42 U.S.C. § 9607(a), (f). Specifically, the NRD Consent Decree reasonably balances the extent of GUC Trust's liability, the Trustees' need to recover funds for restoration and to compensate for assessment costs, and the need to minimize the expense and potential further delay of protracted litigation. Accordingly, the proposed NRD Consent Decree is reasonable.

**3. The NRD Consent Decree Is Consistent With the Goals of CERCLA**

The primary goals of CERCLA are to "encourage prompt and effective responses to hazardous waste releases and to impose liability on responsible parties," and to "encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation." *In re Cuyahoga*, 980 F.2d at 119. The NRD Consent Decree furthers these statutory goals. As discussed above, the proposed NRD Consent Decree accounts for past assessment costs and estimated restoration costs at the sites at issue. The settlement further meets CERCLA's statutory goal of providing final resolution of liability for settling parties. Moreover, the proposed NRD Consent Decree serves CERCLA's goal of reducing, where possible, the litigation and transaction costs associated with response actions by entering into settlements, as well as the public policy favoring settlement to reduce costs to litigants and burdens on the courts. *See Solvent Chem. Corp.*, 984 F. Supp. at 165; *Hooker Chem.*, 540 F. Supp. at 1072.

**No Prior Request**

No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the United States and the State of New York respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York  
June 10, 2013

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

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In re: : Chapter 11  
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MOTORS LIQUIDATION COMPANY, *et al.*, : Case No. 09-50026 (REG)  
f/k/a/ GENERAL MOTORS CORP., *et* :  
al., : Jointly Administered  
:  
Debtors. :  
:  
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**NOTICE OF LODGING OF PROPOSED  
CONSENT DECREE AND SETTLEMENT AGREEMENT  
REGARDING NATURAL RESOURCE DAMAGE CLAIMS FOR  
THE ONONDAGA LAKE NPL SITE**

The United States of America hereby lodges with the Court a proposed Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims Between the Motors Liquidation Company GUC Trust, the United States of America, and the State of New York (the “NRD Settlement Agreement”). A copy of the NRD Settlement Agreement is attached hereto as Exhibit A, and has been executed by all parties.

The United States requests that the Court not approve the proposed Settlement Agreement at this time. Notice of the lodging of the proposed Settlement Agreement will be published in the

*Federal Register*, following which the United States Department of Justice will accept public comments on the proposed Settlement Agreement for a 30-day period. After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if appropriate, will request that the Court approve the proposed Settlement Agreement.

Dated: New York, New York  
April 8, 2013

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

In re:  
MOTORS LIQUIDATION COMPANY *et al.*,  
f/k/a GENERAL MOTORS CORP. *et al.*,  
  
Debtors.

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

CONSENT DECREE AND SETTLEMENT AGREEMENT REGARDING NATURAL RESOURCE DAMAGE CLAIMS FOR THE ONONDAGA LAKE NPL SITE BETWEEN THE GUC TRUST, THE UNITED STATES OF AMERICA, AND THE STATE OF NEW YORK

I. BACKGROUND

WHEREAS, on June 1, 2009, four of the Debtors (collectively, the “**Initial Debtors**”), including an entity that subsequently became known as Motors Liquidation Company (f/k/a General Motors Corporation) (“**MLC**”), commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), Case No. 09-50026 (REG);

WHEREAS, on October 9, 2009, two additional debtors, REALM and ENCORE (together with the Initial Debtors, the “**Debtors**”), commenced voluntary cases under chapter 11 of the Bankruptcy Code;

WHEREAS, the Debtors’ chapter 11 cases have been consolidated for procedural purposes and are being administered jointly under Case No. 09-50026 (REG) (the “**Bankruptcy Case**”);

WHEREAS, the United States of America (the “**United States**”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, on behalf of the United States Department of the Interior (“**DOI**”), has alleged that MLC and/or affiliated Debtors are potentially responsible or liable parties with respect to the Onondaga Lake NPL Site located in Onondaga County, New York (the “**Settled Onondaga NRD Site**”);

WHEREAS, the United States on behalf of DOI and the State of New York (“**New York**”) on behalf of its Department of Environmental Conservation (“**DEC**”) have alleged that Debtors are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675, and analogous state laws, for damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 9601(16) (“**NRD**”) including costs of natural resource damage assessment and restoration actions that DOI and/or New York have incurred or will incur at or in connection with the Settled Onondaga NRD Site;

WHEREAS, New York timely filed proof of claim number 50588 (the “**New York Onondaga NRD Claim**”) seeking NRD damages and assessment costs with respect to sites including the Settled Onondaga NRD Site;

WHEREAS, on November 28, 2009, the United States timely filed proof of claim No. 64064 (and a duplicate copy which was assigned claim number 67362) against MLC, and on April 16, 2010 filed substantially identical timely proofs of claim against REALM and ENCORE, which were assigned claim numbers 70154 and 70255, respectively (collectively, the “**First U.S. Proof of Claim**”), asserting, *inter alia*, that Debtors are liable to the United States, and specifically to its agency DOI, for certain NRD damages and assessment costs with respect to the Settled Onondaga NRD Site, (the “**US Onondaga**

**NRD Claim**” and, together with the New York Onondaga NRD Claim, the **“Onondaga NRD Claims”**);

WHEREAS, on April 8, 2011, the United States filed a second proof of claim (the **“Second U.S. Proof of Claim”**) against MLC in the Bankruptcy Court that supersedes the First U.S. Proof of Claim, which was assigned claim number 71118;

WHEREAS, the United States and New York State alleged in the Onondaga NRD Claims that Debtors are liable for NRD and natural resource damages assessment costs and restoration actions;

WHEREAS, by a previous consent decree and settlement agreement that the Court has approved (ECF No. 10453), the Debtors on the one hand and the United States, certain States and the St. Regis Mohawk Tribe on the other hand resolved various NRD claims of the United States and its co-trustees for NRD purposes other than those with respect to the Settled Onondaga NRD Site, which remained unresolved;

WHEREAS, by previous consent decrees and settlement agreements that the Court has approved, the Debtors and the United States have entered into settlements of all of the claims against Debtors and/or the GUC Trust, with the exception of the U.S. Onondaga NRD Claim, that were alleged by the United States in the First U.S. Proof of Claim and the Second U.S. Proof of Claim;

WHEREAS on March 28, 2011, the Court entered its Findings of Fact, Conclusions of Law, and Order Pursuant to Sections 1129(a) and (b) of the Bankruptcy Code and Rule 3020 of the Federal Rules of Bankruptcy Procedure Confirming Debtors’ Second Amended Joint Chapter 11 Plan (the **“Confirmation Order”**) which, among other things, confirmed the Debtors’ Second Amended Joint Chapter 11 Plan (as may be amended, modified or

supplemented from time to time, the “**Plan of Liquidation**”), established the Motors Liquidation GUC Trust pursuant to the Plan and the March 30, 2011 Motors Liquidation Company GUC Trust Agreement (the “**GUC Trust Agreement**”);

WHEREAS pursuant to the Plan of Liquidation, the Debtors have dissolved and the GUC Trust is authorized to resolve all remaining claims on behalf of the Debtors;

WHEREAS, the GUC Trust, the United States, on behalf of DOI, and New York, on behalf of DEC, (collectively, the “**Parties**”) have differences of opinion which they now wish to resolve with respect to the Settled Onondaga NRD Site as provided herein;

WHEREAS, the treatment of liabilities provided for herein represents a compromise of the positions of the Parties and is entered into solely for purposes of this settlement;

WHEREAS, Section 5.7 of Debtors’ Plan of Liquidation provides that “[n]othing in the Plan shall limit or affect any right of the United States to offset (subject to obtaining Bankruptcy Court approval to the extent required) any obligation owed by the United States to the Debtors against any obligation owed by the Debtors to the United States”;

WHEREAS, certain of the Debtors’ disputed prepetition claims against the United States have been resolved in a manner that the United States believes has given rise to a right to offset those claims in partial satisfaction of prepetition obligations owed by the Debtors to the United States;

WHEREAS, such offset reduces the United States’ allowed general unsecured claim provided for herein for the Settled Onondaga NRD Site by \$1,232,323.00 (the “**US Offset Recovery**”);

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Consent Decree and Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

## II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or its regulations or in the Bankruptcy Code shall have the meaning assigned to them in CERCLA, its regulations, or the Bankruptcy Code. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

- a. **“Allowed General Unsecured Claim”** has the meaning set forth in the Plan of Liquidation.
- b. **“Bankruptcy Code”** has the meaning set forth in the recitals.
- c. **“Bankruptcy Court”** or the **“Court”** has the meaning set forth in the recitals.
- d. **“CERCLA”** has the meaning set forth in the recitals.
- e. **“Claim”** has the meaning provided in Section 101(5) of the Bankruptcy Code.
- f. **“Distribution”** has the meaning set forth in the Plan.
- g. **“District Court”** means the United States District Court for the Southern District of New York.
- h. **“DOI”** has the meaning set forth in the recitals.
- i. **“Effective Date”** means the date an order is entered by the Bankruptcy Court approving this Settlement Agreement.
- j. **“GUC Trust”** (also referred to as the **“Motors Liquidation Company GUC Trust”**) has the meaning set forth in the Plan.
- k. **“MLC”** has the meaning set forth in the recitals.

- l. **"New York Onondaga NRD Claim"** has the meaning set forth in the recitals.
- m. **"NPL"** means the National Priorities List, 42 U.S.C. § 9605.
- n. **"Onondaga NRD Allowed Claim"** shall have the meaning set forth in Paragraph 4.
- o. **"Onondaga Lake Site"** means the Onondaga Lake NPL Site located in the City of Syracuse and the Towns of Salina, Geddes, and Camillus, New York.
- p. **"Onondaga NRD Claims"** has the meaning set forth in the recitals.
- q. **"Parties"** has the meaning set forth in the recitals.
- r. **"Petition Date"** means June 1, 2009, in the case of all Debtors other than REALM and ENCORE, and October 9, 2009, in the case of REALM and ENCORE.
- s. **"Plan of Liquidation"** or **"Plan"** means the Second Amended Joint Chapter 11 Plan of Debtors, dated March 18, 2011 (as revised, amended, and supplemented from time to time).
- t. **"Settlement Agreement"** means this Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims Between the MLC GUC Trust, the United States of America, and the State of New York.
- u. **"Settled Onondaga NRD Site"** has the meaning set forth in the recitals.
- v. **"United States"** means the United States of America and all of its agencies, departments, and instrumentalities, including DOI.
- w. **"US Offset Recovery"** has the meaning set forth in the recitals.
- x. **"US Onondaga NRD Claim"** has the meaning set forth in the recitals.

### III. JURISDICTION

2. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334.

### IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the United States, New York, the Debtors' estates, the GUC Trust, their legal successors and assigns, and any other trustee, examiner, or receiver appointed in the Bankruptcy Case.

### V. ALLOWED CLAIMS

4. (a) In settlement and full satisfaction of the US Onondaga NRD Claim and the New York Onondaga NRD Claim, the United States on behalf of DOI and New York on behalf of DEC (collectively, "**the Joint Onondaga Trustees**") shall have a total Allowed General Unsecured Claim (subject to the provisions of paragraph 4(b) herein setting forth certain adjustments in light of the US Offset Recovery) in the total amount of \$5,500,000.00, classified in Class 3 under the Plan of Liquidation (the "**Onondaga NRD Allowed Claim**"), which shall be divided by the Joint Onondaga Trustees as follows: (i) \$85,000 for DOI's claims for past NRD assessment costs, (ii) \$10,000 for DEC's claims for past NRD assessment costs, and (iii) \$5,405,000 for restoration funds at the Settled Onondaga NRD Site sought by the Joint Onondaga Trustees. For purposes of the Debtors' claims register only, the Onondaga NRD Allowed Claim shall be reflected as a \$2,787,500 allowed claim for the United States on behalf of DOI, and a \$2,712,500 allowed claim for New York on behalf of DEC. All distributions on the Onondaga NRD Allowed Claim shall be paid in accordance with

Paragraphs 4(b) and 12-15. Any cash payments and all proceeds from the sale of non-cash consideration for restoration funds with respect to the Settled Onondaga NRD Site shall be deposited into DOI NRDAR, Account No. 14X5198 (the “**Onondaga Restoration Account**”), to be jointly managed by the Joint Onondaga Trustees. A separate, Site-specific numbered account for the Settled Onondaga NRD Site has been or will be established within the DOI NRDAR Fund. The funds received shall be assigned to the Onondaga Restoration Account to allow the funds to be maintained as a segregated account within the DOI NRDAR Fund. The Joint Onondaga Trustees shall use the funds in the Onondaga Restoration Account, including all interest earned on such funds, for restoration activities at or in connection with the Settled Onondaga NRD Site as directed by the Joint Onondaga Trustees.

(b) The United States (i) shall apply \$85,000 of the US Offset Recovery to fully satisfy DOI’s claim for past costs at the Settled Onondaga NRD Site, and (ii) shall apply the remaining \$1,147,323 of the US Offset Recovery in partial satisfaction of the \$5,405,000 restoration funds portion of the Onondaga NRD Allowed Claim. In light of the US Offset Recovery, the Onondaga NRD Allowed Claim shall be adjusted accordingly. Upon approval by the Bankruptcy Court of this Consent Decree and Settlement Agreement, the GUC Trust shall, in accordance with Debtors’ Plan of Liquidation, (i) distribute to New York New GM Securities and GUC Trust Units on account of an allowed general unsecured claim in Class 3 in the amount of \$10,000 and (ii) distribute to the Onondaga Restoration Account New GM Securities and GUC Trust Units on account of an allowed general unsecured claim in Class 3 in the amount of \$4,257,677.



5. Nothing contained herein shall reduce the ability of the GUC Trust to enforce as to all claimants, other than the United States, Section 7.2 of the Plan.

6. Upon the completion of all distributions and payments for the foregoing allowed general unsecured claim, the Second U.S. Proof of Claim and New York Proof of Claim shall be deemed fully settled and satisfied as to the Settled Onondaga NRD Site, and the claims agent shall be authorized and empowered to adjust the claims register accordingly.

7. Notwithstanding the allowance of the US Onondaga NRD Claim for the Settled Onondaga NRD Site as a Class 3 Unsecured Claim, nothing in this Consent Decree and Settlement Agreement shall prejudice the rights of the United States to assert any additional right of offset that is or becomes available to the United States pursuant to Section 5.7 of Debtors' Plan of Liquidation.

8. The US Onondaga NRD Claim and the New York Onondaga NRD Claim for the Settled Onondaga NRD Site shall be treated as provided under Section 4.3 of the Plan of Liquidation and shall not be subordinated to any other allowed Class 3 Unsecured Claim pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

9. Only the cash and/or proceeds from the sale of the distribution received by the United States and New York (and net cash received upon sale of any non-cash distributions) pursuant to this Settlement Agreement for any Allowed General Unsecured Claim, and not the total amount of any Allowed General Unsecured Claim, shall be credited by each such entity to its account for the Settled Onondaga NRD Site for which it received an Allowed General

Unsecured Claim, and shall reduce the liability of any non-settling potentially responsible parties for that particular site by the amount of the credit.

10. Simultaneous with the initial distribution on account of the Onondaga NRD Allowed Claim, the GUC Trust is authorized to eliminate the distribution reserve amount to be used by the GUC Trust pursuant to Article VII of the Plan for remaining unresolved general unsecured claims against Debtors asserted in the United States' and State of New York's proofs of claim.

### **VII. PAYMENT INSTRUCTIONS**

11. Cash distributions to the United States pursuant to this Settlement Agreement shall be made at <https://www.pay.gov> to the U.S. Department of Justice account in accordance with instructions provided to the Debtors and/or the GUC Trust by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York and shall reference Bankruptcy Case Number 09-50026 and DOJ File Number 90-11-3-09754, as well as the phrase "Settled Onondaga NRD Site."

12. Cash distributions to New York pursuant to this Settlement Agreement shall be made by check, money order, or by electronic funds transfer, payable to "NYSDEC-Natural Resource Damages Fund." If mailed, payment should be sent to MAUREEN F. LEARY Assistant Attorney General, Environmental Protection Bureau, NYS Office of the Attorney General, The Capitol, Albany, NY 12224-0341.

13. Non-cash distributions to New York pursuant to paragraph 4(a)(ii) of this Settlement Agreement shall be made to:

JP MORGAN CHASE, KEY BANK TYPE B ESCROW  
ACCT NO. 99112  
ATTENTION: DANIEL F. MURPHY  
Worldwide Securities Services

4 New York Plaza, 12<sup>th</sup> Floor  
New York, NY 10004

The GUC Trust shall transmit written confirmation of such cash and non-cash distributions to  
New York at the addresses specified below:

14. Non-cash distributions to the Joint Onondaga Trustees, New York on behalf of  
DEC, and the United States on behalf of DOI in connection with the Settled Onondaga NRD  
Site shall be made to:

Merrill Lynch:  
For Federal Book Entry Securities:  
ABA#021000018  
BK of NYC/MLGOV  
Further Credit to the US Department of the Interior  
Account Number: 78L-09001

15. The GUC Trust shall transmit written confirmation of such cash and non-cash  
distributions to the United States and New York at the addresses specified below:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-1-09754

DAVID S. JONES  
NATALIE N. KUEHLER  
Assistant United States Attorney  
Office of the United States Attorney  
for the Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007

FUND MANAGER  
Natural Resource Damage Assessment and Restoration Fund  
Department of the Interior Office of Natural Resource Restoration

1849 C Street, NW  
Mailstop 3548  
Washington, DC 20240

As to New York:

MAUREEN F. LEARY  
Assistant Attorney General  
Environmental Protection Bureau  
NYS Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

ANDREW O. GUGLIELMI  
Senior Attorney  
Office of General Counsel  
New York State Dep't of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6500

SHARON BROOKS  
NRD Fund Manager  
Office of General Counsel  
New York State Dep't of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6500

**VIII. COVENANTS NOT TO SUE**

16. In consideration of the payments and/or distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraph 19, (i) the United States on behalf of DOI and New York on behalf of DEC covenant not to file a civil action or to take any administrative or other civil action against the post-effective date Debtors or the GUC Trust pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to NRD at the Settled Onondaga NRD Site, including assessment and restoration costs and including NRD caused by or arising from releases of hazardous substances from any portion of the

Settled Onondaga NRD Site and all areas affected by migration of such substances from the Settled Onondaga NRD Site, and (ii) the United States on behalf of DOI and New York on behalf of DEC shall not file any additional claims against the post-effective date Debtors or the GUC Trust as to the Settled Onondaga NRD Site. These covenants are solely with respect to natural resource damage claims at the Settled Onondaga NRD Site, and shall have no effect on (i) any claims or causes of action asserted now or in the future by or on behalf of the Environmental Protection Agency (“EPA”), or (ii) any settlements that have been reached with respect to any such claims prior to the date this Settlement Agreement is lodged.

17. These covenants not to sue (and any reservations thereto) shall also apply to the post-effective date Debtors’ and the GUC Trust’s successors, assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign, officer, director, employee, or trustee of the post-effective date Debtors or the GUC Trust is based solely on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of the post-effective date Debtors or the GUC Trust. The covenants not to sue set forth in this Settlement Agreement shall extend only to the post-effective date Debtors, the GUC Trust, the Revitalizing Auto Communities Environmental Response (“RACER”) Trust established pursuant to MLC’s confirmed Plan of Liquidation, and the persons described in Paragraphs 16 and 17 of this Consent Decree and Settlement Agreement, and do not extend to any other person. For purposes of this Paragraph, General Motors Company, a/k/a New GM, shall not be considered a successor or assign of the Debtors or the GUC Trust. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the post-effective date Debtors, the GUC Trust, the RACER Trust, and the persons or entities described in Paragraphs 16 and 17 of this Consent Decree and

Settlement Agreement. The United States, New York, and the GUC Trust expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the post-effective date Debtors, for any matter arising at or relating in any manner to the Settled Onondaga NRD Site.

18. The covenants not to sue set forth in Paragraphs 16 through 17 do not pertain to any matters other than those expressly specified therein.

### **IX. RESERVATION OF RIGHTS**

19. The United States and New York expressly reserve, and this Settlement Agreement is without prejudice to, all rights against the post-effective date Debtors and the GUC Trust with respect to all matters other than those set forth in Paragraphs 16 and 17. The United States and New York also specifically reserve, and this Settlement Agreement is without prejudice to, any action based on (i) a failure to meet a requirement of this Settlement Agreement; (ii) criminal liability; and (iii) liability (to the extent not resolved by separate prior settlements) with respect to any site other than the Settled Onondaga NRD Site. In addition, the United States and New York reserve, and this Settlement Agreement is without prejudice to, all rights against the post-effective date Debtors and the GUC Trust with respect to the Settled Onondaga NRD Site for liability under federal or state law for acts by the post-effective date Debtors and the GUC Trust, their successors, or assigns that occur after the date of lodging of this Settlement Agreement. Future acts creating liability under CERCLA or state law do not include continuing releases from the Settled Onondaga NRD Site related to the Debtors' and the GUC Trust's conduct prior to the Effective Date. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or New York to take any removal or response

action under Section 104 of CERCLA, 42 U.S.C. § 9604, or summary abatement action under ECL Article 27, or any other action under applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable law or regulation, or New York under any applicable law or regulation, or to excuse the post-effective date Debtors or the GUC Trust from any disclosure or notification requirements imposed by CERCLA or any other applicable federal or state law or regulation.

20. Entry of an order approving this Settlement Agreement by the Bankruptcy Court shall bar the post-effective date Debtors and the GUC Trust from asserting or pursuing, and the GUC Trust hereby covenants not to sue and agrees not to assert or pursue, any claims or causes of action against New York and the United States, including any department, agency, or instrumentality of the United States or New York, with respect to the Settled Onondaga NRD Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim against the United States or New York under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613; or (iii) any claims arising out of response or restoration activities at the Settled Onondaga NRD Site. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **X. CONTRIBUTION PROTECTION**

21. The Parties agree, and by entering this Settlement Agreement the Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the GUC Trust and the post-effective date Debtors are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. Subject to the last sentence of this Paragraph, the “matters addressed” in this Settlement Agreement, as that phrase is used in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and subject to the covenants not to sue and releases and reservations of rights set forth in Sections VIII and IX herein, include, without limitation, claims by the United States on behalf of DOI, New York on behalf of DEC, or potentially responsible parties for natural resource damages, including restoration and assessment costs at or in connection with natural resource damages at the Settled Onondaga NRD Site for which covenants not to sue were provided, including natural resource damages resulting from releases of hazardous substances from any portion of the Settled Onondaga NRD Site and all areas affected by migration of hazardous substances emanating from the Settled Onondaga NRD Site. The “matters addressed” in this Settlement Agreement do not include claims against any of the Debtors or the GUC Trust asserted on behalf of EPA or New York for past response costs incurred by potentially responsible parties prior to the Petition Date and included in proofs of claim filed in the Bankruptcy Case by potentially responsible parties with respect to the Settled Onondaga NRD Site. Matters addressed in this Settlement Agreement do not include any matters that are the subject of the reservations of rights set forth in Section IX herein.



22. The GUC Trust agrees that, with respect to any suit for contribution brought against it after the Effective Date for matters related to this Settlement Agreement, it will notify the United States and New York within fifteen business days of service of the complaint upon it. In addition, in connection with such suit, the GUC Trust shall notify the United States and New York within fifteen business days of service or receipt of any Motion for Summary Judgment and within fifteen business days of receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States and New York pursuant to this Paragraph shall not in any way affect the protections afforded under Section X of this Settlement Agreement). Nothing herein shall obligate the United States or New York to undertake any action with respect to any suit for contribution.

#### **XI. PUBLIC COMMENT**

23. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, inadequate, or otherwise not in the public interest.

24. If for any reason (i) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 23, or (ii) the Settlement Agreement is not approved by the Bankruptcy Court: (a) this Settlement Agreement shall be null and void and the parties hereto shall not be

bound under the Settlement Agreement or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; and (c) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

## **XII. JUDICIAL APPROVAL**

25. This Settlement Agreement shall be subject to approval of the Bankruptcy Court.

## **XIII. NOTICES**

26. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States and the GUC Trust, respectively.

### As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Ref. DOJ File No. 90-11-3-09736

David S. Jones  
Natalie N. Kuehler  
Assistant United States Attorney  
Office of the United States Attorney  
for the Southern District of New York  
86 Chambers Street, Third Floor  
New York, NY 10007

Amy L. Horner  
Office of the Solicitor-Environmental Restoration Branch  
U.S. Department of the Interior  
1849 C St NW  
MS 5325  
Washington, DC 20240

As to New York:

Maureen F. Leary  
Assistant Attorney General  
Environmental Protection Bureau  
NYS Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

Andrew O. Guglielmi  
Senior Attorney  
Office of General Counsel  
New York State Dep't of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6500

As to the GUC Trust:

David A. Vanaskey  
Vice President  
Wilmington Trust Company  
Rodney Square North  
1110 North Market Street  
Wilmington, DE 19890-1615

David R. Berz  
Weil, Gotshal & Manges LLP  
Attorneys for the GUC Trust  
1300 Eye Street, NW, Suite 900  
Washington, D.C. 20005

**XIV. INTEGRATION, AMENDMENTS, AND EXECUTION**

27. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Settlement Agreement may not be amended except by a writing signed by all parties to this Settlement Agreement.

28. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

29. Each undersigned representative of a Party certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of such a Party and bind it legally to the terms and provisions herein.

**XV. RETENTION OF JURISDICTION**

30. The Bankruptcy Court shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement and for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms.

**XVI. EFFECTIVE DATE**

31. This Settlement Agreement shall be effective upon approval by the Court in accordance with Paragraph 25 above.

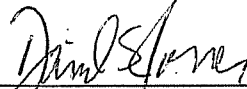
**THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT:**

**FOR THE UNITED STATES:**

**PREET BHARARA**  
United States Attorney for the  
Southern District of New York



Robert G. Dreher  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice



David S. Jones  
Natalie N. Kuchler  
Jaimie L. Nawaday  
Assistant U.S. Attorneys  
86 Chambers St., 3<sup>rd</sup> Floor  
New York, NY 10007

Date: 4/5/13

Date: 4/8/13



Alan S. Tenenbaum  
National Bankruptcy Coordinator  
Patrick Casey  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section  
U.S. Department of Justice

Date: 4/8/13

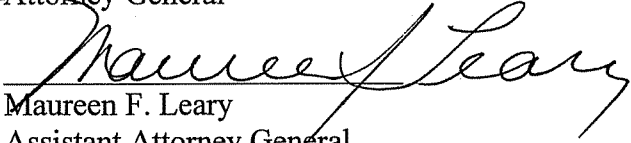
**FOR THE STATE OF NEW YORK:**

ERIC T. SCHNEIDERMAN  
Attorney General

Date:

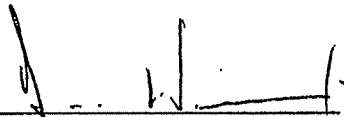
*March 27, 2013*

By:

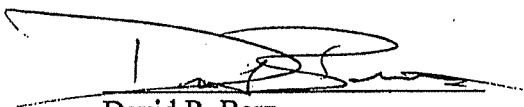
  
Maureen F. Leary  
Assistant Attorney General  
Chief, Toxics Section  
NYS Department of Law  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224-0341  
Tel.: (518) 474-7154  
Fax: (518) 473-2534  
maureen.leary@ag.ny.gov

**FOR THE GUC TRUST:**

Date: 3/27/13

  
Moters Liquidation Company GUC Trust  
By David A. Vanaskey  
Vice President  
Wilmington Trust Company  
Rodney Square North  
1110 North Market Street  
Wilmington, DE 19890-1615

Date: 3/27/13

  
David R. Berz  
Weil, Gotshal & Manges LLP  
Attorneys for the Moters Liquidation Co.  
GUC Trust  
1300 Eye Street, NW, Suite 900  
Washington, D.C. 20005  
Tel.: (202) 682-7000  
Fax: (202) 857-0939  
Email: david.berz@weil.com

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**ORDER APPROVING CONSENT DECREE AND SETTLEMENT AGREEMENT  
BETWEEN THE GUC TRUST, THE UNITED STATES, AND THE STATE OF NEW  
YORK**

Upon the Motion, dated June 16, 2011 (the “**Motion**”), of the United States of America, jointly with the State of New York, for entry of an order approving that certain consent decree and settlement agreement (the “**NRD Consent Decree**”) by and between the United States of America (the “**United States**”), on behalf of the United States Department of the Interior (the “**DOI**”) the State of New York, and the GUC Trust, resolving proof of claim No. 64064 (and the superseding claim No. 71118) timely filed by the United States (the “**US NRD Claim**”), and proof of claim No. 50636 timely filed by the State of New York (the “**New York NRD Claim**”), as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is fair, reasonable, and in the public interest, and furthers the goals of CERCLA, and having found and concluded that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted and the NRD Consent Decree is approved; and it is further



ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York  
\_\_\_\_\_, 2013

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UNITED STATES BANKRUPTCY JUDGE