

Hearing Date: February 5, 2019 at 2:00 pm
Objection Deadline: January 29, 2019 at 4:00 pm

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

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

**AMERICAN AXLE & MANUFACTURING, INC.’S MOTION TO INCLUDE
THE TONAWANDA FORGE SITE IN THE RACER TRUST OR, IN THE
ALTERNATIVE, FOR AUTHORITY TO FILE A LATE CLAIM AGAINST THE
DEBTORS TO PARTICIPATE IN DISTRIBUTIONS FROM THE GUC TRUST**

American Axle & Manufacturing, Inc. (“**American Axle**”), by its attorneys
Hodgson Russ LLP, hereby files this motion (the “**Motion**”) for entry of an Order ruling that
American Axle’s claim is properly resolved by the inclusion of the Tonawanda Forge Site (“the
Site”) in the Revitalizing Auto Communities Environmental Response Trust (“**RACER Trust**”).
Alternatively, if the Court does not grant the above requested relief, then American Axle requests
a ruling that it may file a late claim against the debtors to enable it to participate in a distribution
from the Motors Liquidation Company General Unsecured Creditor’s Trust (“**GUC Trust**”) for

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environmental contamination caused by General Motors Corporation (“**Old GM**”) at the Site.

American Axle respectfully submits this Motion and states as follows:

1. American Axle files this Motion to have the Site included in the RACER Trust or alternatively for permission to file a late proof of claim against Old GM’s bankruptcy estate to participate in the distribution of assets from the GUC Trust.

2. As background, the Site is located at 2390 and 2392 Kenmore Avenue in Tonawanda, New York. Old GM owned the Site, and conducted operations there, from approximately 1954 through 1994. American Axle owned the Site, and conducted operations there, from 1994 through 2008. American Axle sold the Site in 2008 to Lewis Bros., LLC (“**Lewis Bros.**”). Upon information and belief, Lewis Bros. conducted operations, including widespread demolition activities, at the Site after its purchase in 2008.

3. According to the New York State Department of Environmental Conservation (“**NYSDEC**”), PCBs are the contaminant of concern at the Site. The manufacture of PCBs was banned in 1979.

4. Old GM filed for bankruptcy on June 1, 2009. The RACER Trust was created through the confirmed Plan of Liquidation in this matter and an annexed consent decree and Settlement Agreement in March 2011 [Docket No. 9941]. The RACER Trust remediates, and positions for redevelopment, properties and facilities previously owned by Old GM.

5. At the time of Old GM’s filing for bankruptcy in 2009, and at the time that the RACER Trust was established in 2011, NYSDEC never ordered, or even suggested, that

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American Axle conduct any cleanup at the Site during its tenancy. As a matter of fact, to the contrary, NYSDEC had issued a report in 2003, and then a ruling in 2006, which found that Old GM had a “legal duty to perform the cleanup, as both an owner of the Site and generator of the hazardous waste.”

6. In May 2013, the Site was listed as a Class 2 Site in the State Registry of Inactive Hazardous Waste Sites (which lists Superfund sites in New York State).

7. On December 19, 2017, more than nine years after American Axle sold the Site to Lewis Bros., and more than eight years after Old GM filed for bankruptcy, the New York State Attorney General sent a letter to American Axle noting significant contamination at the Site (the “**December 17 Letter**”). Prior to the December 17 Letter, American Axle did not have notice of potential remediation liability for the Site.

8. In support of the Motion, American Axle submits a Notice of Motion, the Declaration of Mark Williams, dated December 21, 2018, with exhibits, (**Exhibit A**) a Memorandum of Law (**Exhibit B**) and a proposed order (**Exhibit C**).

WHEREFORE, for the reasons stated in the accompanying papers, American Axle respectfully submits that this Court should grant its Motion to have the Site included in the RACER Trust or alternatively for leave to file a late proof of claim against Old GM to enable movant to participate in distributions from the GUC Trust.

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Dated: December 21, 2018

Respectfully submitted,

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