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Company GUC Trust	
UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	v
	:
In re	: Chapter 11 Case No.
	:
MOTORS LIQUIDATION COMPANY, et al.,	: 09-50026 (REG)
f/k/a General Motors Corp., <i>et al</i> .	:
Debtors.	: (Jointly Administered)
	:
	X

MOTORS LIQUIDATION COMPANY GUC TRUST'S REPLY TO DAVID I. SCOTT'S INFORMAL RESPONSE TO THE 114th OMNIBUS OBJECTION TO CLAIMS (WELFARE BENEFITS CLAIMS OF RETIRED AND FORMER SALARIED AND EXECUTIVE EMPLOYEES)

TO THE HONORABLE ROBERT E. GERBER, UNITED STATES BANKRUPTCY JUDGE:

The Motors Liquidation Company GUC Trust (the "GUC Trust"), formed by the

above-captioned debtors (collectively, the "**Debtors**")¹ in connection with the Debtors' Second

Amended Joint Chapter 11 Plan, dated March 18, 2011 (as may be amended, supplemented, or

modified from time to time), files this reply (the "Reply") to the informal response interposed by

¹ The Debtors are Motors Liquidation Company (f/k/a General Motors Corporation) ("**MLC**"), MLCS, LLC (f/k/a Saturn, LLC), MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation), MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.), Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc.

David I. Scott to the 114th Omnibus Objection to Claim (Welfare Benefits Claim of Retired and Former Salaried and Executive Employees) (ECF No. 8193) (the "**Omnibus Objection**"), and respectfully represents:

Preliminary Statement

1. The Omnibus Objection seek the disallowance and expungement of certain compensation and welfare benefits claims of retired and former salaried and executive employees of the Debtors on the basis that such claims (a) are related to unvested welfare benefits that were capable of being modified or terminated by the Debtors at will pursuant to the terms of the operative documents governing such welfare benefits, and were modified or terminated in accordance with such operative documents, and (b) to the extent modified, have otherwise been assumed by New GM² pursuant to the terms of the Master Purchase Agreement and, as described in the Omnibus Objection, are not the responsibility of the Debtors or the GUC Trust and therefore should be disallowed and expunged from the claims register.

2. On December 20, 2010, the Debtors filed the Omnibus Objection. Responses to the Omnibus Objection were due by January 27, 2011 at 4:00 p.m. (the "**Response Deadline**"). Prior to the Response Deadline, Mr. Scott, whose details are listed on <u>Annex 1</u> hereto, requested an adjournment of the Omnibus Objection (the "**Response**") relating to his proof of claim (No. 21810, the "**Scott Claim**," attached hereto as **Exhibit "1"**), which was duly granted by the Debtors. On Tuesday, July 12, 2011 at 5:04 p.m., an attorney for the GUC Trust contacted Mr. Scott by telephone and email using the contact details provided by Mr. Scott in the Scott Claim, to confirm whether Mr. Scott intended to file a formal response to the Omnibus

 $^{^{2}}$ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Omnibus Objection.

Objection. As of the date of this Reply, no further communications have been received from Mr. Scott.

3. The GUC Trust³ respectfully reiterates the Debtors' position in the

Omnibus Objection, and further submits that Mr. Scott has failed to provide any legal or factual support for the Scott Claim, and as a result the Scott Claim should be disallowed and expunged.

The Claim Should Be Disallowed and Expunged

4. Mr. Scott has failed to demonstrate the validity of his claim and, thus, the Claim should be disallowed and expunged. *See, e.g., In re Oneida, Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009), *aff'd*, No. 09 Civ. 2229 (DC), 2010 WL 234827 (S.D.N.Y. Jan. 22, 2010) (claimant has burden to demonstrate validity of claim when objection is asserted refuting claim's essential allegations).

(A) The Claim Should Be Disallowed As Debtors Had Right to Amend or Terminate Each Welfare Benefit Plan

5. Mr. Scott has not demonstrated that the Debtors were bound by any legal or contractual requirement to continue to provide him, or other retired and former salaried and executive employees, with the Welfare Benefits on a permanent basis. The Omnibus Objection explains that the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), comprehensively regulates employer-provided welfare benefit plans, and that ERISA does not require an employer to provide or to vest welfare benefits. Welfare benefits provided under the terms of a welfare benefit plan may therefore be reduced or forfeited in accordance with the terms of the applicable welfare benefit plan. 29 U.S.C. § 1051(1); *see Moore v. Metro. Life Ins.*

³ While the Omnibus Objection were filed by the Debtors, this Reply is being filed by the GUC Trust because, pursuant to the Plan, the GUC Trust now has the exclusive authority to prosecute and resolve objections to Disputed General Unsecured Claim (as defined in the Plan).

Co., 856 F.2d 488, 491 (2d Cir. 1988); *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 400 (6th Cir. 1998).

6. In addressing claims similar to the Scott Claim, the Sixth Circuit has noted that welfare plans such as the Welfare Benefit Plans are specifically exempted from vesting requirements (to which pension plans are subject) under ERISA, and accordingly, employers "*are generally free under ERISA, for any reason at any time, to adopt, modify or terminate welfare plans.*" *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) (citing *Adams v. Avondale Indus., Inc.*, 905 F.2d 943, 947 (6th Cir. 1990)). As noted in the Omnibus Objection, however, the Sixth Circuit has, recognized that once welfare benefits are vested, they are rendered forever unalterable.

7. Thus, Mr. Scott bears the burden of showing that the Debtors intended to vest Welfare Benefits provided by the Welfare Benefits Plans, and did *in fact* vest the Welfare Benefits, such that Mr. Scott has a contractual right to the perpetual continuation of their Welfare Benefits at a contractually specified level. Mr. Scott has not provided any evidence that contradicts the Debtors' common practice of advising participants of the Welfare Benefits Plans of the Debtors' right to amend or terminate the Welfare Benefits at any time. Moreover, Mr. Scott has not provided any evidence of a separate, affirmative contractual obligation on the part of the Debtors to continue to provide the Welfare Benefits specifically to him. Therefore, the Debtors and the GUC Trust do not have any liability with respect to the reduction in or discontinuation of the Welfare Benefits.

(B) Ongoing Benefits Have Been Assumed by New GM

8. On the Closing Date, New GM completed its purchase of certain assets in accordance with the Master Purchase Agreement. Pursuant to Section 6.17(e) of the Master

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Purchase Agreement (*Assumption of Certain Parent Employee Benefit Plans and Policies*), New GM assumed the Benefit Plans specified in a disclosure schedule, and the Welfare Benefit Plans are set forth on that schedule. New GM assumed the obligation to provide the Welfare Benefits to the extent required to be provided under the terms of the applicable Welfare Benefits Plan in effect on the Closing Date, including both responsibility for all claims incurred prior to the Closing Date and all future claims properly payable pursuant to the terms of the applicable Welfare Benefit Plan in effect when such claims are incurred. Therefore, the Debtors and the GUC Trust do not have any liability with respect to Welfare Benefits that have been assumed by New GM, and Mr. Scott has not provided any factual or legal basis to suggest otherwise.

Conclusion

9. Because (i) ERISA recognizes that employers are free to amend or terminate welfare benefits, (ii) no contrary contractual rights to vested welfare benefits has been established by Mr. Scott; and (iii) New GM assumed the Benefit Plans as modified, the Debtors and the GUC Trust have no liability for the Scott Claim. The GUC Trust reiterates that Mr. Scott has not provided any legal or factual support for the Scott Claim, and the Scott Claim cannot be afforded prima facie validity under the Bankruptcy Code. Accordingly, the Scott Claim should be disallowed and expunged in its entirety.

10. WHEREFORE, for the reasons set forth above and in the Omnibus Objection, the GUC Trust respectfully requests that the Court grant the relief requested in the Omnibus Objection and such other and further relief as is just.

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Dated: New York, New York May 1, 2012

/s/ Joseph H. Smolinsky Harvey R. Miller Stephen Karotkin Joseph H. Smolinsky WEIL, GOTSHAL & MANGES LLP 767 Fifth Avenue New York, New York 10153 Telephone: (212) 310-8000 Facsimile: (212) 310-8007

Attorneys for Motors Liquidation Company GUC Trust

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Annex 1

	114th Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)											
No.	Proof of Claim	Response Docket No.	Name	Total Claimed	Summary							
	No.											
1.	21810	Informal	David I. Scott	\$1,370,174.25 (U)	Mr. Scott has not provided a written response to the							
					Omnibus Objection.							

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Exhibit 1

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APS0544486221		
UNITED STATES BANKRUPTCY COURT FOR THE SOUTH	IERN DISTRICT OF NEW YORK	PROOF OF CLAIM
Name of Debtor (Check Only One) Motors Liquidation Company (f/k/a General Motors Corporation) MLCS, LLC (f/k/a Saturn, LLC) MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation MLC of Harlem, Inc (f/k/a Chevrolet-Saturn of Harlem, Inc) NOTE This form should not be used to make a claim for an administrative expense arising a for purposes of asserting a claim under 11 US C § 503(b)(9) (see Item # 3) All other request	09-13558 (REG)	Your Claim le Scheduled As Follows:
for purposes of asserting a claim under 11 0 S C § 503(b)(s) (see them # 5) All other request filed pursuant to 11 USC § 503	is for payment of an administrative expense should be	
Name of Creditor (the person or other entity to whom the debtor owes money or property) SCOTT DAVID I Name and address where notices should be sent SCOTT DAVID I SCOTT DAVID I 862 SAINT ANDREWS WAY FRANKFORT IL 60423-6500 FRANKFORT IL 60423-6500	Check this box to indicate that this claim amends a previously filed claim	HI NOV 9 2009
,	Court Claim Number: (If known)	
Telephone number 8/5-464-9165 Email Address DA VID. I. SCOTT & COMCAST. NET Name and address where payment should be sent (if different from above)	Filed on	If an amount is identified above, you have a claim scheduled by one of the Debtors as shown (Thi scheduled amount of your claim may be a amendment to a previously scheduled amount.) If yo agree with the amount and priority of your claim a scheduled by the Debtor and you have no other claim
FILED - 21810 MOTORS LIQUIDATION COMPANY F/K/A GENERAL MOTORS CORP SDNY # 09-50026 (REG) Telephone number	 Check this box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars Check this box if you are the debtor or trustee in this case 	against the Debtor, you do not need to file this proof o claim form, <u>EXCEPT AS FOLLOWS</u> If the amoun shown is listed as DISPUTED, UNLIQUIDATED, o CONTINGENT, a proof of claim MUST be filed n order to receive any distribution in respect of you claim. If you have already filed a proof of claim <u>p</u> accordance with the attached instructions, you need no file again
1. Amount of Claim as of Date Case Filed, June 1, 2009: \$_/;3	570, 174.25	5. Amount of Claim Entitled to
 3 Last four digits of any humber by which creditor identifies debtor:	ant to 11 USC § 503(b)(9), complete item 5 principal amount of claim Attach INSURMCE AND SALTH CHANGES S25 	 Priority under 11 U.S.C § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount Specify the priority of the claim Domestic support obligations under 11 U S C § 507(a)(1)(A) or (a)(1)(B) Wages, salares, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U S C § 507(a)(4) Contributions to an employee benefit plan - 11 U S C § 507(a)(5) Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U S C § 507(a)(7) Taxes or penalties owed to governmental units - 11 U S C § 507(a)(8) Value of goods received by the Debtor within 20 days before the date of commencement of the case - 11 U S C § 507(a)(2)) Other - Specify applicable paragraph of 11 U S C § 507(a)(_) Amount entitled to priority
SCANNING If the documents are not available, please explain in an attachment.		\$ Amounts are subject to adjustment on 4/11/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment
Date. Date.	and telephone number if different from the notic	ce

Penalty for presenting fraudulent claim Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U S C §§ 152 and 35 Modified B19 (GCG) (12/08)

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November 02, 2009

Summary of Medical and Insurance Plan Claim

The attached documents are the detailed support for this claim. Overall this claim establishes the loss of payments and increase in expenses to the claimant under the Health and Executive retirement plans of General Motors Corporation under which the claimant retired on 3/31/2005.

The spread sheet print out attached shows the net present value, as of June 15, 2009, of the sum of the payment lost and cost increases to the claimant due to the changes. The payments were summarized from 6/15/09 until the claimant's 65^{th} birthday in January 2014 for health insurance costs and until claimant's 85^{th} birthday in 2034 for loss of death benefit, and discounted at an annual interest rate of 2.8%. The NPV of the loss as of 6/15/2009 is \$1,370,174.25 as shown on the final page of the spread sheet print out.

The logic of this calculation is that the excutive life insurance would have been paid upon the claimant's death (assumed to be on his 85^{th} birthday for purposes of valuing the future payout) in the amount of 10 times the claimant's salary at retirement. These amount assumed to have been paid in January 2034 in the amount of \$2,672,000.00 (10X claimants final salary of \$267,200 per annum) discounted back to 6/15/2009(\$1,341,367.50). Included in the total noted above is the NPV of the differential of expenses and insurance premiums for health insurance and cancelled dental and vision coverage between 6/15/09 and claimant's age 65 in 2013. The premium difference is a matter of record for 2010 and the expense levels are assumed to be expenses incurred for cancelled coverages. The premiums are inflated at 8% to get when-spent dollars and discounted back to 6/15/09 at the noted rate of 2.8%. This medical section of the claim amounts to \$28,806.75. The sum of the two items amounts to the claim sum of \$1,370,174.25.

David I Scott 862 Saint Andrews Way Frankfort, Illinois 60423

Executive retirement considered as the death benefit of 10x final salary paid out in year 2034 discounted back to 6/15/09 See year 2034 in spread sheet

Effect of increase in costs of medical insurance and loss of Dental and Vision

Assume 2000 per year cost for Dental, ditto for Vision, and increase in deductible for medical all

on a monthly basis (total of \$704 in 2010) annual inflation of costs assumed at 8% for both the base case and future Discount Rate = 2.8%

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